REPORTS

OF DIVERS

RESOLUTIONS

IN

LAW,

Arising upon CASES in the

COURT of WARDS,

And other COURTS at

WESTMINSTER,

In the Reigns of the late KINGS, King JAMES and King CHARLES.

Collected by the Right Honorable, Sir *JAMES LEY*, Knight and Baronet, Earl of *Marlborough*, &c. whilst he was Attorney of the Courts of WARDS and LIVERIES

And now published for the Common good, according to his Lordships Manuscript.

With two Exact Tables, the one of the Cases, and the other of the Principal Matters therein contained.

LONDON,
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TO THE READERS.

READERS,

IT is not for want of private Entertainment that this Book now ſeeks to be publick, for it has been received with the beſt, and nothing but the Generall Good could bring it into Print. If any one ſhall think I have been too officious herein, by having my Judgement outballanc'd by my Affections; and ſhall gueſs that the miſs of this Piece had not much imported, I am contented he ſhould (for a time) enjoy his Opinion; but if I much miſtake not, the Booke will ſoone inſtruct him better, and not ſuffer him to continue ſo unwarrantable a Schiſm; for with all the better learn'd it has acquir'd a Reputation befitting the production of ſo Noble an Author. There lies a trivial Objection againſt it, that theſe are Court of VVards Caſes, and that Court being now down, are therefore uſeleſs: To which

which I answer, that the Cases are not all Resolutions of that Court, and for those that are, therein is resolved, besides the matter of Tenures, not onely Cases of Lunaticks, Idiots, &c. which are applicable to present Practice, but also many incident Points which belong to other learning every day in use: Besides, were not these, yet who is he that would be without any kind of Law learning that aimes at a compleat Library? But the usefulnes of the Book will better appear by it selfe then any thing I can say for it, and therefore I shall not longer detain ye, but advise ye to read, and be your owne Judges. I speake to such as are Ingenious and Candid: *Verum laudent, culpent, occentent Pecus Arcadicum, maligniorum ronchi blaterent, adprobent, suspendant naso, an prævaricentur Lolio vicitantes blenni & buccones, Liræ Liræ mihi neque Ciceum interduim.*

Valete.

REPORTS OF CASES

Of the Court of VVARDS, in the time of Sir *James Ley* Knight, Attorny of the King in the ſaid Court.

Trinity, or Paſchæ. 1619.

Longs Caſe.

A. ſeiſed of a Freehold held of the Manno; of B. by ſuit of Court, and 7 s. Rent. per annum.

A. is attaint of Treaſon, and by means thereof, the Freehold came to the Crown, who granted the ſame by Letters Pattents to the Earl of Nottingham, who conveyed the ſame to Walter Campion.

Queſtion.

Whether Walter Campion ought to pay the ſaid Rent of 7 s. either by Law or Equity, or both, though the Tenure and Services be extinct, and the Freehold come to the Crown, as aforeſaid?

Rent ſuſpended by union with the Crown, revived by grant to the Subject.

The three chief Juſtices agreed in one cleer opinion, that Walter Campion ought to pay the Rent by Law, and that the Rent is not extinct.

Termino Paſchæ 7 Jacobi Regis.

Untons Caſe.

Sir Henry Unton Knight, being ſeiſed of fee of divers Mannors, held by Knight-ſervice, in Capite, conveyed the ſame by Deed executed in his life to certain Feoffees, to the uſe of himſelf and the heirs of his body begotten, and for default of ſuch iſſue to Anne Knightley his ſiſter, the wife of Sir Valentine Knightley, and the heirs males of his

body begotten, and for default of ſuch iſſue to Cicelie Wentworth, another of his ſiſters, wife of John Wentworth Eſquire, and the heires males of his body begotten, the remainder to the right heirs of the ſaid Sir Henry Unton, Anne Knightley dieth in the life time of Sir Henry Unton, without heirs Male, having iſſue onely Anne, Elizabeth, and Mary, the ſaid Sir Valentine then and yet living, and having no other iſſue but the ſaid three daughters, they being his coheirs apparent, Sir Henry Unton dieth the 23 of March, 38 Eliz. without iſſue, the ſaid Cicely Wentworth, Anne Knightley the daughter, and Elizabeth Knightley being then of full age, and the ſaid Mary of the age of eleven years and nine months, all this being found by Office, and now Mary accomplishing her full age, prayeth her ſpeciall livery.

Queſtion is, whether the ſaid Mary ought to compound with his Highneſſe, for her marriage, or not before livery be ſued, which was reſolved by Flemming, chief Juſtice, and Coke, chief Juſtice of the common Pleas, and Tanfield, chief Baron, upon mature deliberation, that Mary ought not by Law to be a Ward to his Majeſty for her body during the life of Sir Valentine her father, nor to be chargeable to the Kings Majeſty for the value of her marriage, notwithſtanding the ſaid Sir Valentine were never Tenant by the Curteſie of the ſaid lands, nor the Lady Anne, at any time ſeiſed of any of the ſaid lands, but that the ſaid Mary ought to ſue her livery, without compounding for her marriage, or the value thereof. See Ambroſia Gorges Caſe accordingly, 6 Coke, fol. 22.

Hillary 6 Jacobi.

Maunds Caſe.

TErtio Decembris, 44 Eliz. It was found by Mandamus, after the death of Anthony Maund, that Thomas Maund his father was ſeiſed in fee of a Meſſuage and Yard land in Burford Cliff in the County of Oxford, and ſo ſeiſed primo Junii 33 of Eliz. in conſideration of a marriage, between Anthony Maund, and Prudence Welſhman, to be had and ſolemnized, made a Deed of feoffment of the ſame land, to Edward Welſhman and Richard Swift, and their heirs, to the uſe of him the ſaid Thomas Maund, and Elizabeth his wife, for their lives, and the life of the longeſt liver of them, and after that, to the uſe of the ſaid Anthony and Prudence, during their lives, and the life of the longeſt liver of them, and after, to the uſe of the heirs of the ſaid Anthony on the body of the ſaid Prudence, lawfully to be begotten, the remainder to the right heirs of the ſaid Anthony; and for delivery of poſſeſſion, made Edward Savage and John Keeble his Atturneys, and that the ſaid Thomas Maund, the fourth of June, 33 of Eliz., came to the ſaid Meſſuage and Tenement aforeſaid, with the Appurtenances, and then being at the ſaid Meſſuage, did ſay to the ſaid Edward Welſhman, then and there, being in the Meſſuage, and upon the land aforeſaid, in Engliſh words, I am content you ſhall have this Houſe and Land, for your ſiſter, and my ſon, to the uſes, and according to the writing, to you and Richard Swift made, meaning the ſaid Anthony and Prudence being ſiſter of the ſaid Edward. And that the ſaid Thomas Maund afterwards, primo Decembris, 39 Eliz. did deliver poſſeſſion of the ſaid Meſſuage or Tenement to the ſaid Anthony Maund his ſon, to have and occupy to his proper uſe, and that

the

the ſaid Anthony, primo Decembris 33 Eliz. did take to wife the ſaid Prudence, and after into the ſaid Meſſuage and Tenement did enter, and was ſeiſed, prout lex, &c. And that the ſaid Anthony had iſſue by the ſaid Prudence, George Maund, lawfully begotten, and the 6 of January, 39 of Eliz. died in poſſeſſion, prout lex, &c. and that Prudence did ſurvive him; and that Thomas Maund after the death of Anthony, did enter into the ſame Tenements, and was thereof ſeiſed, prout lex, &c. And the ſaid Thomas ſo ſeiſed, the ſaid Thomas and Elizabeth his wife, the 30 of April, 41 Eliz. by Fine, and other Aſſurances, did bargain enfeoffe and ſell the Premiſſes to Thomas Pixton and his heirs, who entred, and was thereof ſeiſed, prout lex, &c. And that the ſaid Tenements are holden by Knights ſervice, in Capite, and that George Maund is ſon and heir of Anthony Maund, of the age of five years, and that the ſaid Anthony hath no other lands, which ſaid Caſe being delivered to Sir Thomas Flemming Knight, Lord chief Juſtice, and Sir Edward Coke, Lord Juſtice of the Common Pleas, they, upon mature deliberation had thereupon, did reſolve, that the ſaid Engliſh words uttered by Thomas Maund at the Meſſuage, do not amount to any livery and ſeiſin, and ſo no Eſtate of Inheritance or Freehold paſſed by the ſaid ſuppoſed feoffment, as well for that there is no intent expreſſed to make livery and ſeiſin, neither by words nor by circumſtances. But the words, (I am content) do rather import an aſſent, then any act, and the words, (you ſhall have this Houſe) do rather import an intent and promiſe to perform ſome act in future time, then to execute any livery in preſent, whereupon a Decree was had accordingly.

Termino Paſchi 7 Jacobi.

Earl of Cumberlands Caſe.

THe Caſe was as followeth, (viz.) It was found by Office at Kendall, 21 of Decemb. 6 Jacobi, That George, late Earl of Cumberland, (Diu ante obitum ſuum) was ſeiſed in tail to his heirs males, of the Caſtles and Mannors in Bcowham and Appleby, &c. The remainder to Sir Ingram Clifford in tail, with divers remainders over in tail, the remainder to the right heirs of Henry Earl of Cumberland, father of the ſaid George, and that the ſaid George ſo ſeiſed by Fine and Recovery, conveys the Premiſſes to the uſe of himſelf, and the Lady Margaret his wife, for their lives, for the joynture of the ſaid Lady, and after to the heirs males of his body, and for the default of ſuch iſſue, to the uſe of Francis, now Earl of Cumberland, and his heirs males of his body, and for want of ſuch iſſue, to the uſe of the right heirs of the ſaid Earl Georg, and that by vertue thereof, and of the Statutes of Uſes, the ſaid Earl George, and the Lady Margaret his wife, were ſeiſed accordingly; And that the ſaid Earl being ſo ſeiſed by Indenture, 15 of October, 3 of January, in conſideration of blood, did covenant to ſtand ſeiſed of all his Hereditaments, to the uſe of himſelf, and the heirs males of his body, and for want of ſuch iſſue, to the uſe of Francis, now Earl of Cumberland, and the heirs males of his body, and for want of ſuch iſſue, to the uſe of Francis, now Earl of Cumberland, and the heirs males of his body, and for want of ſuch iſſue, to the uſe of the heirs of the body of the ſaid Gorge Earl, and for want of ſuch iſſue, to the uſe of Francis, now Earl of Cumberland, and his right heirs, by vertue

whereof,

whereof, and of the Statutes of Uſes, the ſaid George, Earl, was ſeiſed of the Premiſſes in tail, to him and the heirs males of his body, with remainders over as laſt above mentioned, and the ſaid Earl George ſo being ſeiſed, by his laſt Will in writing, 19 Octob. 3 Jacobi, Voluit, & declaravit in his Anglicanis verbis, (videlicet) And where I have by my Deed bearing date, &c. conveyed the Premiſſes ut ſupra with power of Revocation, I do hereby ratifie and confirm the ſame, and do hereby, for further aſſurance thereof, deviſe and bequeath, all my Caſtles, Mannors, Lands, Tenements, and Hereditaments, as in the Deeds, prout, &c. per dictam ultimam voluntatem plenius liquet, & apparet, & ulterius dicunt Juratores, &c. quod prædictus Georgius Comes Cumberland. poſtea (videlicet) 30 Octobris, 3 Jacobi obiit, ſine hærede maſculo de corpore ſuo legittime procreato; And further finde, that the ſaid Margaret, Counteſſe of Cumberland is living, and that ſhe took the profits of the Premiſſes, except the Sheriffwick, from the death of the ſaid late Earl, untill the finding of the ſaid Office, and that the Premiſſes are holden, and at the time of the death of the ſaid late Earl, were holden of his Majeſty in Capite by Knights ſervice, and that the Lady Anne Clifford, is daughter and next heir of the ſaid Earl George, and findes her age, and that the ſaid Earl George, Nulla alia ſive plura habuit, ſive tenuit Meſſuagia, Maneria, Caſtra, &c. in Comitatu prædicto de dicto Domino Rege vel de aliquo alio in Dominico vel ſervitio, prout Juratoribus prædictis, ſuper captionem hujus Inquiſitionis conſtare poterit in cujus rei, &c.

Queſtions, Firſt, whether there be enough found in Office to amount to a dying ſeiſed:

Secondly, whether the Office be not ſufficient to entitle the King:

Thirdly, admitting the Office to be inſufficient, then whether it be meerly void, ſo that a Mandamus is to iſſue; or that it be only defective, whereby a Melius Inquirendum is to be awarded, which caſe being delivered to the Lords, the Judges aſſiſtants, that is, Sir Thomas Flemming chief Juſtice, Sir Edward Coke, chief Juſtice of the Court of common Pleas, and Sir Lawrence Tanfield, chief Baron; and after counſell heard on both ſides, although the ſame Lords, the Judges aſſiſtants, were at firſt of opinion, after they had heard the Allegations and Arguments on both parts, that the Office upon the Statute of 32 H. 8. was a good and ſufficient Office; and that thereby his Majeſty was intitled to livery and primer ſeiſin; yet becauſe it was but their opinions as they conceived the caſe, Prima facie, they appointed to hear further Argument in the ſaid caſe, which being done, and divers preſidents produced, yet it was nevertheleſſe determined, and clearly agreed and reſolved for Law by the ſaid Lords, the Judges aſſiſtants; that in regard it was found by the ſaid inquiſition, that the ſaid right Honourable George, Earl, had in his life time, by Fine and Recovery, conveyed all his Caſtles, Mannors, Lands and Tenements in the ſaid County of Weſtmerland, except the Sheriffwick, to the uſe of himſelf, and the Lady Margaret his wife for their lives, for the joynture of the ſaid Counteſſe, the remainder to the heirs males of his own body, with divers remainders over, as aforeſaid; and the ſaid late Earl, died without iſſue male of his body, and that the ſaid Counteſſe is yet living, and hath taken the profits ever ſince the death of the ſaid Earl; There was enough found to entitle the Kings Majeſty to a livery, and primer ſeiſin, and that notwithſtanding all the Allegations and Objections made by the Plaintiffs Counſell for the avoiding of the ſaid Office; yet they were all

all of opinion, and ſo did after long deliberation, fully reſolve, that by the Statute of 32 H. 8. the ſame Office was a full and ſufficient Office, and that there was as much found in the ſame as was requiſite to be found thereby, whereupon it was decreed accordingly.

Trinity 7 Jacobi.

Burrough of Doncaſters Caſe.

THe Burrough and Town of Doncaſter was incorporated time out of minde, and had ancient Soake belonging to the ſame, extending into divers Towns neer adjoyning, King Edward the fourth, by his Letters Patents, reciting the ſame, anno Regni ſui, doth grant and confirm unto them, to be ever after, called, Mayor and Commonalty; And by the name of Mayor and Communalty of Doncaſter, doth grant unto them the ſaid Liberties, (Ex certa ſcientia, & mero motu) and by a clauſe in the ſame Patent, doth grant to the ſaid Mayor and Communalty, amongſt other things, that the Mayor and his ſucceſſors, ſhould be a Conſervator of the Peace within the ſaid Burrough, and further as followeth: (videlicet) Et ulterius de abundanti gratia noſtra, conceſſimus, & per præſentes concedimus pro nobis & hæredibus noſtris, præfato Majori, & commitat. & ſucceſſoribus ſuis, quod idem Major & ſucceſſores in perpetuum habeant returnum omnium brevium, mandatorum, Præceptorum, & Billarum, noſtrorum, nec non omnimodas ſummoniones de ſcaccario noſtro, & hæredum noſtrorum & aliorum extractum quorumcunque exequendorum infra Burgiam prædictam tam ad ſectam noſtram, & hæredum noſtrorum per nos, vel hæredes noſtros ſolos, ſeu nos vel hæredes noſtros conjunctim cum aliis perſonis, vel alia perſona, quam ad ſectam alterius cujuſcunque perſonæ proſequendam, & omnimodas executiones brevium, mandatorum, præceptorum, Billarum, ſummoniarum, & extractum prædictum, Ita quod nullus Vicecomes, Coronator, Eſchеator, Baliivus aut alius miniſter noſter, vel hæredum noſtrorum Burgam prædictam ingrediantur ad aliquod officium ibidem faciendum niſi in defectu ipſius Majoris, vel ſucceſſorum ſuorum, It is admitted for the preſent, without prejudice to either party; That the Mayors for the time being, have time out of minde of man, by vertue of Writs of Diem clauſit Extremum, Writs of Mandamus, and ſuch like, exerciſed the Office of Eſcheator within the ſaid Burrough and Soake, touching lands lying onely within the ſaid Burrough, and the Liberties thereof, and have had the aſſiſtance of the Feodary of the County, and found and returned all Offices thereupon found.

Queſtions, Firſt, whether that Patent doth inable the Mayor to be Eſcheator or not; And that the Eſcheator of the County of York, ought not to meddle there.

Secondly, if not, then whether the Mayor in an ancient Corporation, may by preſcription be Eſcheator or no, and that the Eſcheator of the County ought not to meddle therein; and whether the Patent doth ſufficenty confirm ſuch Eſcheator.

Which cauſe was conſidered of, by Sir Thomas Flemming, Lord chief Juſtice, Sir Edward Coke, Lord chief Juſtice of the common Pleas, and Sir Lawrence Tanfield, chief Baron of the Exchequer, and by them debated in the preſence of Learned Councell on both ſides, and in the end reſolved, That by the ſaid Charter, or Letters Patents, the

ſaid Mayor was ordained or made Eſcheator. and the ſaid Judges then reſolved, that a Mayor might preſcribe to be Eſcheator, wherin he is Mayor, ſo as ſuch preſcription might be ſufficiently proved, whereupon the ſaid Court proceeded to hear the proof, whether the ſame preſcription were ſufficiently proved or not, whereupon it appearing that the ſaid preſcription was not ſufficiently proved; but on the other part ſundry interruptions were proved to be made, both by the Feodaries certificate, and otherwiſe of the ſame pretended preſcription, and thereupon a Decree was had accordingly.

Paſch. 7 Jacobi.

Potmans Caſe.

IT is found by ſeverall Offices, taken in the County of Kent, after the death of Margery Wilkins, the one upon a Mandamus, 29 Martii ſecundo Jacobi, the other upon a Melius inquirendum primo Auguſti tertio Jacobi, That one Margaret Wilkins was ſeiſed in her Demeſne as of fee of a Meſſuage and Lands in Rainham, and of another Meſſuage and Lands in Halſtowe, and of divers other lands in the inquiſition mentioned, and that part thereof were holden in Capite by Knights ſervice, and that ſhe died ſo thereof ſeiſed, firſt of February, 26 Eliz. and that Rich. Lawrence was her coſin & heir, and was of the age of 30 years at the time of her death, And that William Tylden, and Sir Richard Potman, did ſeverally receive the iſſues and profits of the ſaid ſeverall Meſſuages and Lands, from the laſt day of May, 26 Eliz. untill the taking of the inquiſition, and thereupon the ſaid Sir Richard Potman and William Tylden, are by ſeverall Decrees of this Court, charged to pay the mean rates of the ſaid ſeverall Meſſuages and Lands, from the laſt day of May 26 Eliz. untill livery tendered in November 4 Jacobi by Richard Lawrence, the ſaid William Tylden, at the ſum of 93 l. 12 s. 7 d. ob. q. And the ſaid Sir Richard Potman, at the ſum of 393 l. 6 s. 8 d. ob. q. And for reverſall of the ſaid Decrees, and diſcharge of the ſaid mean rates, iſſues and profits, the ſaid William Tylden, and Sir Richard Potman, have exhibited ſeverall Bills, and alledged, that the ſaid ſeverall mean rates, iſſues and profits, are pardoned by the generall Pardons of 27, & 29 of Eliz. And Stephen Pearce the proſecutor, hath anſwered thereunto; That the ſame mean rates, iſſues and profits, are not pardoned by any of the ſaid Acts, but are therein excepted.

Queſtion. If the ſaid mean rates, iſſues and profits, be pardoned by the ſaid ſeverall Pardons of 27 and 29 of Eliz. which being argued and debated before Sir Thomas Flemming, Sir Edward Coke, and Sir Lawrence Tanfield, Knights, the Lord Juſtices, aſſiſtants to that Court, And the ſaid pardons and the exceptions thereof, by them ſeriouſly conſidered, and upon ſhewing forth unto them divers preſidents in this Court, that divers mean rates, iſſues and profits of lands and tenements had been paid, as well to the ſaid late Queen, as to the Kings Majeſty, and livery ſued in like caſes, The ſaid Judges aſſiſtants, did agree and conclude, that the ſaid mean rates, and ſo charged upon the ſaid Sir Richard, and the ſaid livery by the ſaid heir of the ſaid Margaret Wilkins, were not all pardoned by the ſaid Acts of generall Pardons, or either of them, but that the ſame were fully and cleerly excepted out of the ſame; for that in both the ſaid Acts by expreſſe words are excepted,

every

every thing that for default of ſuing, or preſenting of any livery, might come or be to the Queens Majeſty, and which as then was not diſcharged, and further, that all and every perſon which have tendred, and ought to ſue livery out of the ſaid Queens hands, of, or for any Mannors, Lands, Tenements, or Hereditaments, whatſoever they be, ſhall ſue his and their liverie and liveries out of the ſaid Queens hands, of his or their Mannors, Lands, Tenements, or Hereditaments, in like manner and form as they and every of them, ſhould, and ought to have done, if the ſaid Acts had never been had or made, any thing in the ſame compriſed and ſpecified to the contrary, notwithſtanding; By which exception, the ſaid Judges did take it, that the ſaid mean rates and profits were ſuch things, as ought to come, and be to the ſaid late Queens Majeſty, and to the King.

Note, for default of ſuing of livery, after the death of the ſaid Margaret Wilkins, and not finding of an Office after the death, was a default in the heir, of ſuing or proſecuting of livery, for the ſame being the means for the ſaid heir to ſue his livery thereupon, And that the exception of every thing, that for default of ſuing or proſecuting of any livery ought to come, and to be to the ſaid Queens Majeſty, doth not only extend to thoſe perſons which were in Ward, and after to ſue livery; but alſo to ſuch as were of full age, at the death of their Anceſtor, and are to yeild primer ſeiſin, and ſue livery; whereupon the ſaid former Decree was confirmed.

Paſch. 7 Jacobi Regis.

Tyldens Caſe.

THere is the like Decree againſt the ſaid William Tylden, upon the Caſe before mentioned, for the ſum of 83 l. 12 s. 4 d. ob. q.

Paſch. 7 Jacobi Regis.

Clarks Caſe.

IT was found by inquiſition, taken at Eaſt Greenwich in Kent, 30 May, 7 Jacobi Regis, That Humphrey Clark Eſquire, was ſeiſed in fee ſimple of two acres of land with the appurtenances, called Cheſtedd, with the appurtenances in Stockbury, and that the ſaid two acres are holden, and at the time of the death of the ſaid Humphrey Clark, were holden of the Kings Majeſty, as of his Honor of Peverel, by Knights ſervice, and not in Capite, but by what part of a Knights fee, Juratores ignorant, And that the ſaid Humphrey Clark died therof ſeiſed ſecund. Martii laſt, before the taking of the ſaid inquiſition, And that Francis Clark is ſon and heir, of the age of nine years, two Months and four days at the time of the death and more.

Queſtion, Whether the ſaid two acres are not holden of his Majeſty by Knights ſervice onely, as is expreſſed, and not in Capite, Ibeit they are holden, Ut de honore de Peverel, And the rather, becauſe it appeareth, 29 H. 8. Brook Livery 58. that but part of Peverel is in Capite, which being deliberatly and maturely conſidered of by the Lords, the Judges aſſiſtants, Sir Tho. Flemming, Sir Edw. Coke, and Sir Lawr. Tanfield, Knights,

Knights, they did reſolve, that the two acres, called Cheſted, as it is found in the ſame Office, is a mean tenure by Knights ſervice; for that the expreſſe finding of it not to be in Capite, doth import the land to be parcel of that part of the Honor of Peverel, which is no parcell of the old Honor of Peverel, which was decreed accordingly.

Trin. 7 Jacobi Regis.

Wills Caſe.

HEnry Wills, being ſeiſed of the fourth part of the Manor of Wray, alias Wrayland, in the County of Devon. of the yearly value of 24 s. holden of the late Queen in Soccage in Capite, did the 26 of November, 30 of Eliz. enfeoffe Zachary Iriſh, Chriſtopher Baſſil, and others, and their heirs, to the uſe of himſelf for life, without impeachment of waſte, And after his deceaſe, to the uſe of Thomas Wills, his ſecond ſon, and the heirs of his body lawfully begotten, and for default of ſuch iſſue, to the uſe of Richard Wills his third ſon, and of the heirs males of his body lawfully begotten, and for default of ſuch iſſue to the right heirs of the ſaid Henry for ever; Henry Wills 42 Eliz. died, and William being his ſon and heir, and then of the age of 40 years, after whoſe death, the ſaid Thomas Willes entred into the ſaid Premiſſes by vertue of the ſaid Conveyance; All this is found by Office after the death of the ſaid Henry, upon which Office, there is Proceſſe gone forth of this Court againſt the occupiers of the ſaid land for want of livery.

Queſtion, Whether the ſaid Thomas Willes ought to ſue livery of the ſaid lands in the name of his other brother, William Willes, or whether there ought to be any livery or primer ſeiſin at all in this caſe, during the continuance of the ſeverall Eſtates tail aforeſaid, whereof the Lords, the Judges aſſiſtants in this Court, having had conſideration, and of the firſt branch of the Statute of 32 H. 8. for deviſing of lands, and the ſaving therin; And after the common Law, before the making of the ſaid Statute, declared their reſolution to be, That neither the ſaid William Willes the heir, nor the ſaid Thomas Willes, ought either by the common Law, or by the ſaid Statute, to ſue any livery for the ſaid lands, part of the ſaid Manor, for that the ſaid Thomas Willes taketh the ſame by vertue of the ſaid Conveyance from his ſaid father, as aforeſaid, which Conveyance, although it be made to one of his children, yet is not the ſon within the intent and meaning of the Statute, in as much as livery is in the firſt ſaving of the Statute only ſaved, as in ſuch caſes hath been accuſtomed; Therefore no purchaſer of land, holden in Soccage in Capite, is bound by Statute to ſue livery, where he cometh to the lands by purchaſe, and for that, the ſaid William the heir, was not by the common Law to ſue any livery, he having no lands at all deſcended to him, And therefore reſolved by the ſaid Judges, that the ſaid William was not by the Law compellable to ſue livery, whereupon, and upon ſight of a Precedent, in the like caſe, reſolved in the Caſe of Thomas Staveley, in this Court, in Trinity Term, 16 Eliz. a Decree was made according to the ſaid reſolution.

Trin.

Trin. 7 Jacobi Regis.

Baileys Caſe.

IT is found by inquiſition, taken at Hereford, 17 of Auguſt, 6 Jacobi, by Diem clauſit Extremum, to enquire after the death of John Bailey, Gent. deceaſed, That the ſaid John Bailey was ſeiſed in his Demeſne as of fee, as followeth: videl. De & in uno Meſſuagio, 30 acris terræ, 7 acris prati, & quinque acris paſturæ cum pertinentiis in Bridye, alias Bridge ſoler, in Comitatu prædicto quondam Jenkin Bailleys land; ac de & in alio Meſſuagio ſive Tenemento, ac de & in quarta parte unius acræ terræ nuper parcella terrarum Dominicalis Manerii de Newton, in Comitatu prædicto, & quod prædictum Meſſuagium, ſive Tenementum, & prædicta quarta pars unius acræ terræ, nuper terrarum Dominicarum prædicti Manerii de Newton, tenentur, & tempore mortis prædicti Johannis Bailie, tenebantur de dicto Domino Rege in Capite per ſervitium militare, & valent per annum ultra repriſas 6 d. And it is further found, that divers other lands were holden of divers other perſons, but no other thing is found to entitle his Majeſty to Wardſhip, but one Ignoramus, of one of theſe parcels, and the death of the ſaid John Bailey is found 6 Maii tunc ultimo præterito, And that John Bailey is his ſon, and next heir, and within the age of 21 years.

Queſtion. Whether the Office finding the Meſſuage or Tenement, and the ſaid fourth part of the ſaid acre of land, be found ſufficient, to entile his Majeſty, or elſe to be void, which caſe being delivered to Sir Thomas Flemming, Sir Edward Coke, Sir Lawrence Tanfield, the three Lords, Judges aſſiſtants, They, upon deliberate hearing of the Councel of John De la Hay Gentleman, the proſecutor, and of the Councell of the ſaid John Bailey the ſon, did reſolve the ſaid inquiſition to be void and inſufficient to entitle his Majeſty to the Wardſhip of the body or lands of the ſaid John Bailey the ſon, and eſpecially, that the finding of a Meſſuage or Tenement is ſo uncertain, that the ſame is meerly void, and the finding of the fourth part, Unius acræ terræ nuper parcellæ Dominicalium Manerii de Newton in Comitatu prædicto, is alſo inſufficient in Law, by reaſon that the ſame is found to be, Nuper parcellam Manerii, By which means, it being ſevered from the Manor, the Viſne of that Manor cannot take notice of that which is no parcell thereof, in ſuch ſort as they might have done, if it had not been divided from the Manor; for which cauſe the ſaid Lords aſſiſtants, held the ſaid Office in that point to be void, upon which reſolution, a Decree was had accordingly.

Trin. 7 Jacobi Regis.

Sparreys Caſe.

JOhn Sparrey, and Elizabeth his wife, were ſeiſed in fee of lands in the right of the wife, holden by Knights ſervice in Capite, and having iſſue by her, He alienes the 22 of December, anno nono Eliz. in fee to Edward, Lord Stafford, The wife died, the iſſue being of full age, and after the huſband died, the iſſue being heir to father and mother; the

land ever since, and yet doth continue in the hands of the Alienee or his assignes, it is ten years since the death of the father, and 12 years since the death of the mother. An Office is found, 25 Aprilis, anno 7 Jacobi Regis, after the death of the mother, by which the speciall matter is found.

Question. Whether the mean rates are to be answered to the King, or that he may onely seise to make Livery to the heir, which case being by Sir James Ley, Knight, his Majesties Attorney Generall of this Court, propounded and delivered unto Sir Thomas Flemming, Sir Edw. Coke, and Sir Lawrence Tanfield the Knights, The three Lords Judges assistants to this Court, after deliberation therein had and taken, the said Judges did resolve, that there were no mean rates and profits incurred during the life of Sparry, to be answered to his Majesty for the profits of, or for the third part, or ninth part of the Premisses, because the said John Sparry being Tenant by the Curtesie, did by his alienation, passe a good Estate for Term of his life, which was not avoidable by the heir, and the mean rates, incurred after his death, and not chargeable upon the land, until entry was made by the heir, or a seisure made for the King, which by any thing appearing in the said Office, was not made before the finding of the said Office, upon which resolution, a Decree was had accordingly.

Trin. 7 Jacobi Regis.

Westcot and Williams Case.

IT was found by inquisition, taken 6 Die Octobris, 44 Eliz. by vertue of a writ of diem clausit Extremum, awarded to enquire after the death of Roger Westcot, Quod prædictus Rogerus die quo obiit fuit seisitus de & in mediate Manerii de Travellard cum pertinentiis in Dominico suo, ut de feodo, & de tali statu sic inde seisitus obiit seisitus, quodque medietas Manerii prædicti, & omnia cætera Præmissa prædicta, &c. 19 Ed. 3. Tenta fuerunt de ad tunc principe ut de Castro suo de Travellard parcella ducatus sui Cornubiæ per servitium militare prout per quandam exemplificationem, & extentum de Trem. pro eodem tunc principe factum 9 Martii, 19 Ed. 3. Quod ab eodem 9 Martii 19 Ed. 3. omnino hucusque dicta medietas Manerii, &c. Tenta fuerunt de Principibus & Ducibus ducatus Cornubiæ prædictæ pro tempore existente per idem servitium Militare? Itaque tempore mortis dicti Rogeri in prædicto brevi nominati, eadem medietas Manerii prædict. & cætera præmissa prædicta cum pertinentiis tenebantur de dicta Domina Regina, nunc & de Castro suo de Travellard prædict. parcella ducatus prædicti jure ducatus suæ Cornubiæ prædictæ per eundem Rogerum Westcot, per idem servitium Militare pro aliquo ipsis Juratoribus noto, sive cognito in contrarium, and were worth by the year, ultra repriſas, 3 lib.

It appeareth by an exemplification and Extent of Tremation, dated the 9 of March 19 Ed. 3. in hæc verba, Wilhelmus Ott terras tenet Domini feodi & dimidium Militis prædicti Pyke, Sir Harde le Scrombe & Trevallyre per servitium Militare, & redendo inde per annum 5 d &c.

Question. Whether this Office thus found, be good and traversable, or meerly void and unperfect, and to be supplied by a Melius inquirendum? Whereupon the said Case being referred to the Judges, assistants of this Court, videlicet, Sir Thomas Flemming, Sir Edward Coke,

Coke, and Sir Lawrence Tanfield, Knights, who having duly conſidered of the ſaid Caſe, did deliver their opinions and reſolution unto Sir James Ley, Knight, his Majeſties Attorney Generall of this Court, which ſaid Attorney, 4 Julii, this Trinity Term, did in open Court declare and publiſh, That the ſaid Judges, aſſiſtants to this Court, have reſolved upon the ſaid Caſe, made upon the Office, found in the County of Cornwall, after the death of Roger Weſtcot, that the ſame Office is inſufficient in the point of Tenure, and is not traverſable, but is to be ſupplied by a Writ of Melius inquirendum, eſpecially by reaſon of the words (videlicet) pro aliquo ipſis Juratoribus noto ſive cognito in contrarium, which words do not import any expreſſe affirmitive verdict, it is therefore ordered and decreed, upon the moots and reaſons aforeſaid, and according to the reſolutions of the ſaid Judges, by the right Honorable Parker, and Councel of the Court, That the Writ of Melius inquirendum circa Commiſſion in the nature of a writ of Melius inquirendum, ſhall be awarded into the County of Cornwall, to enquire better of the Tenure of the moity of the ſaid Manno; of Travellard, alias Travelford, alias Travelwreck, and of all other the Lands and Hereditaments found in the ſaid rated inquiſition, after the death of the ſaid Roger Weſtcot.

Trin. 7 Jacobi Regis.

Sammes Caſe.

JOhn Sammes being ſeiſed of a Grange Mead, to him and his heirs by Copy of Court Roll, according to the cuſtom of the Manno; of Tollethunt major, holden of the King in Capite, of which Manno;, Sir Thomas Beckingham Knight was ſeiſed in fee.

Sir Thomas Beckingham by Deed indented, dated 22 of December, Anno Regni Regis Jacobi primo, made between him on the one part, and the ſaid John Samms and George Samms, ſon and heir apparent on the other part, In conſideration of a certain competent ſumme of Engliſh money, unto the ſaid Sir Thomas, by the ſaid John Samms paid, did bargain, ſell, grant, enfeoffe, releaſe, and confirm unto the ſaid John Samms, the ſaid Mead, called Grange Mead, To have and to hold the ſaid Mead, called Grange Mead, unto the ſaid John Sammes, and George Sammes, their heirs and aſſignes for ever, And by the ſame Deed, it is covenanted as followeth: And the ſaid Sir Thomas Beckingham, for himſelf, his heirs, executors, adminiſtrators and aſſignes, and every of them, doth further covenant, premiſe, and grant, to and with the ſaid John Samms, and George Samms, their heirs and aſſignes, and every of them, That he the ſaid Sir Thomas Beckingham and his heirs, ſhall and will, from time to time, and at all times hereafter, during the ſpace of ten years next coming, after the date hereof, at the reaſonable requeſt, and at the proper coſt and charges of the ſaid John Sammes and George Sammes, or either of them, or of their heirs and aſſignes, or one of them, make, do, ſuffer, acknowledge and execute, or cauſe to be made, done, ſuffered, acknowleged, or executed, all and every ſuch further act and acts, thing and things, deviſe and deviſes, in the Law whatſoever; for the further and better aſſurance, ſurety, ſure making, conveying and aſſuring of the above herein recited, and hereby mentioned to be bargained premiſſes, with their, and every of their appurtenances unto the ſaid John Samms and George Samms, their heirs and aſſignes, according to the intent and meaning

meaning of theſe Preſents, be it by fine, ſeoffment, deed, or deeds inrolled or not inrolled, the inrolment of theſe Preſents, recovery with ſingle or double voucher, or vouchers, releaſe, confirmation with warranty, or warranties, againſt them the ſaid Sir Thomas Beckingham, and his heirs, or without warranty, as by the ſaid John Sammes and George Sammes, or either of them, or by their heirs and aſſignes, or by any of them, or by their, or any of their councell learned in the Laws of this Realm, ſhall be reaſonably deviſed, adviſed, or required; ſo as neither he the ſaid Sir Thomas, ſhall not be compelled to travell, &c. And that all fines, ſeoffments, conveyances, and aſſurances whatſoever heretofore made and executed, or hereafter to be made, levied, ſuffered, and executed, the ſaid hereby bargained premiſſes, or any part thereof, during the ſaid term of ten years above mentioned, by and between the ſaid Sir Tho. Beckingham, or his heirs, or any other perſon or perſons; And the ſaid John Sammes, and George Sammes, or their heirs or aſſignes, or by or between any of them ſhall be and enure, and ſhall be adjudged, reputed, deemed, and taken to be and enure to the onely uſe and behalf of the ſaid John Sammes and George Sammes, their heirs, and aſſignes for ever, according to the intent and true meaning of theſe Preſents, and to no other uſe or uſes, intent or purpoſe whatſoever; and livery and ſeiſin was executed in ſuch ſort as in the backſide of the Deed it is endorſed, videlicet.

Sealed and delivered, and full and peaceable poſſeſſion, ſtate, livery and ſeiſin executed according to the intent and true meaning of theſe Preſents, of the within named premiſſes, to the uſes within mentioned, the day and year within written.

John Samms dieth, George Samms his ſon and heir, being within age. The Queſtion is, Whether George Samms ſhall be in Ward to the Kings Majeſty for that land, or any part thereof; as in and by the ſaid caſe, remaining on the File of caſes may appear. Touching the caſe, the Councel of the ſaid Sir John Sammes did agree; and thereupon, by reaſon of ſome doubt of the Law therein ariſing, it was ordered that the ſame caſe ſhould be ſent to the Judges, aſſiſtants of this Court for their reſolution therein, which was accordingly done; and afterwards, upon the ſecond day of July laſt paſt, in the Term of the holy Trinity, the ſame caſe was argued at Serjeants Inne, before Sir Tho. Flemming Knight, chief Juſtice of England Sir Edward Coke, Lord chief Juſtice of the common Pleas, and Sir Lawrence Tanfield, Knights, Lord chief Baron of the Court of Exchequer, as well by the learned Councel for his Majeſty, as alſo by the Councel of the ſaid Sir John Sammes, which arguments being heard, and well conſidered of by the ſaid Judges, aſſiſtants, although they delivered their opinions, that as they conceived it, there ought to be no Ward in this caſe; nevertheleſſe, if the Councell for the Kings Majeſty would ſhew any other matter, they would again hear them, and thereupon it was adjourned to this preſent Michaelmas Term, ſince which, upon the motion of the ſaid Sir John Sammes in Court by his Councell, it was ordered the third day of November inſtant, that the Councel on both ſides ſhould attend the ſaid Lords, Judges aſſiſtants to this Court at Serjeants-Inne upon Sunday the fifth day of this inſtant month of November in the afternoon, touching the ſaid caſe, at which time the Councell of the ſaid Sir John Sammes attended, and upon their opening the ſaid Caſe unto the ſaid Lords, the Judges aſſiſtants, they did all, without difficulty, deliver their opinions and reſolution to ſuch effect they had formerly done in this manner, videlicet,

That

That although in the ſaid Deed, are contained as well words of releaſe and confirmation, as of feoffment; yet for as much as livery was made, Secundm formam Chartæ, the ſame ſhall enure (as this caſe is) by way of feoffment, and not by releaſe or confirmation, and yet, admitting it ſhould do ſo, that it would be all one, touching the point in queſtion, becauſe a releaſe or confirmation, which enures by way of enlarging an Eſtate, may as well be to a uſe as a feoffment, And did further reſolve, that the ſaid John Sammes the father, only did take by the livery, and the ſaid George took nothing thereby; nevertheleſſe, touching the main point, they reſolved, that the ſaid George Sammes, by the limitation of the uſe in the Habendum, did take, together with the ſaid John Sammes, as joyntenant of the uſe, which being executed by the Statute of 27 H. 8. of uſes, did make them joyntenants, and joyntly ſeiſed of the intereſt and poſſeſſion, And that therefore the ſaid George Sammes, upon the death of the ſaid father, ſhould be ſaid to have the whole land compriſed in the ſaid conveyance, Per jus accreſcendi, and not to take any part thereof by deſcent from his father: which was decreed accordingly.

Michael. 7 Jacobi, 1609.

Holmes Caſe.

RIchard Holmes Eſquire, and his Anceſtor, whoſe heir he is, before the 31 H. 8. and ever ſince have been ſeiſed in fee, of the Mannor of Male, in the County of Lancaſter, holden of his Majeſty and his progenitors by Knights ſervice, as of the Dutchie of Lancaſter, Richard Male, alias Maghall, and his Anceſtors, whoſe heir he is, before the 31 H. 8. and ever ſince have been likewiſe ſeiſed in fee of certain lands in Maghal, parcell of the ſaid Mannor during all the ſaid time, holden of the ſaid Richard Holme, and his Anceſtors, by Knights-ſervice, In 31 H. 8. by inquiſition found after the death of Rich. Holme, Anceſtor of the ſaid Richard Holme, was ſeiſed in fee of the Mannor of Maghall, holden of the King as of his Dutchie of Lancaſter, by Knight-ſervice, And that Edmund Holme was his ſon and heir. and within age, videlicet, 12 years and 11 months, by force of which Office, Edmund Holme, Anceſtor of Rich. Holme the Plaintiff, was in Ward to the King, during the time that Edmund Holme was in Ward. viz. 35 H. 8. by Office found after the death of Robert Male, Anceſtor to Richard Male, now in Ward. It was found that he died ſeiſed of certain lands in Maghal, and that the ſame were holden of the King, as of his Dutchie of Lancaſter, by Knights ſervice; where in truth, the office ſhould have found the tenure as in Ward, becauſe of Ward, In 4 Jacobi Regis, by another Office found, after the death of Richard Male, it was found that he died ſeiſed in fee of the ſaid lands in Maghal, and that the ſame were holen of his Majeſty, as of his Dutchie of Lancaſter by Knights ſervice, whereupon Richard Holme, heir to that Rich. Holme, after whoſe death the Office was found in 31 H. 8. preferred a Bill of Traverſe, requiring to be admitted to traverſe this laſt Office, by which Richard Male is found within age, being heir to that Richard Male, after whoſe death the Office was found, 35 H. 8. The Queſtion being, Whether the tenure of the lands whereof Richard Male, alias Maghal, Anceſtor of the Ward, appearing to be in truth of Richard Holme the Plaintiff, and not of his Majeſty,

whether the Office found in 35 H. 8. be any Eſtoppel to Mr. Holme, to traverſe this laſt Office found in 4 Jacobi; or that the Plaintiff ſhall be put to traverſe the Office of 35 H. 8. Firſt, upon conſideration had, whereof by Sir Thomas Flemming, Sir Edward Coke, Sir Lawrence Tanfield, Knights, the Lords Judges aſſiſtants to this Court, their Lordſhips did reſolve, that the ſaid former Office found in 35 H. 8. was no concluſion or Eſtoppel to the Plaintiff, to traverſe the ſaid Office found 4 Jacobi Regis, becauſe King Henry the eighth had received the fruit and benefit, which was then due to him by the ſaid former Office: And likewiſe, for as much as the ſaid Plaintiff was not now grieved by the ſaid former Office, but by the later Office, as aforeſaid, which reſolution was decreed accordingly.

Michaelmas, 1609.

Staffords Caſe.

ANno Domini 1266. 51 H. 3. The Parſonage of Laxton, in the County of Northampton, was appropriated to the Prior and Covent of Finſhead and their ſucceſſors, within which Parish the ſaid Priory was ſcituated, not a mile diſtance aſunder, and a Vicarage was then endowed, After the ſaid Priory being conſumed with fire, and their poſſeſſions diminiſhed, and they grown exceeding poor, The ſaid Vicarage, by Richard the Biſhop of Lincoln, Ordinary of the place, primo H. 6. was united, annexed, and conſolidated to the ſaid Rectory and Parſonage, to be holden to the Prior and Covent, and their ſucceſſors, and thereby ordained, that they, and their ſucceſſors, after the death of the then Incumbent, ſhould hold the things wherewith the Vicarage was endowed in proper uſe, and they to ſerve the Cure by a ſecular Chaplain, or by one of their own Cannons, as by an Inſtrument or Deed, bearing date in December, 1422. whereunto the ſaid Biſhop cauſed the Seal ad cauſas to be put, appeareth; In which Inſtrument or Deed, theſe words, videlicet, Vocatis omnibus, & ſingulis de jure in hac parte vocandis, ac ſervandis, in hac parte omnibus ſervandis, juriſque ordine requiſit. plenius ſervat, &c. were contained, as by this Deed appeareth, which ſo continued, and the Cure ſerved accordingly, till by the Statute of 31 H. 8. by force of their ſurrender, the Premiſſes, as appropriate, came to the Crown, in ſuch plight, as the Prior and Covent held, as by the Statute appears; It appeareth upon Record in the Exchequer, that upon the ſuppreſſion, a ſallary of 100 s. per annum, was allowed to a Curate to ſerve the Cure of the ſaid Parish-church of Laxton, and that there was not any endowed of a Vicarage there, and the ſame continued till 7 Ed. 6. That the King by Letters Patents under the great Seal of England, for money did grant to Sydney and Halſwel, their heirs and aſſignes, Totam Rectoriam, & Eccleſiam noſtram de Laxton in Comitatu Northampton, cum ſuis juribus, & pertinentiis univerſis, nuper Prioratus de Finſhead, &c. Ac unum Meſſuagium, ac omnia terras, prata, paſturas & hæreditamenta noſtra, cum pertinentiis, modo vel nuper in tenura, five occupatione Johannis Batchelor, & Richardi Lightfoot in Laxton, dicto nuper Prioratui de Finſhead, &c. In as ample a manner as the Prior had the ſame, and as it came to the Crown, from the ſaid Patentees it came to the Anceſtors of William Stafford Gentleman, his Majeſties Ward, and from them to him by deſcent, and ſo found by Office after

after the death of Sir William Stafford, the Wards father, who have, and ſtill do cauſe the Cure to be ſerved by a preaching Miniſter, now within this year, ſince the Office found, the Defendant Croſſe, hath gotten a Preſentation from the King to himſelf of the ſaid Vicarage, and thereupon hath procured admiſſion and induction.

Queſtion. Whether Croſſe by his Preſentation, Admiſſion and Induction, ſhall have and enjoy from the Ward, the things wherewith the ſaid Vicarage was endowed, whereupon a caſe being drawn, and after delivered to the chief Juſtices, Flemming, Coke, and Tanfield, chief Baron, They, upon mature deliberation, did reſolve, that for as much as the ſaid Vicarage after the endowment therof, was in the firſt year of King H. 6. by the Biſhop of Lincoln, then Ordinary of that Dioceſſe, and by the Prior & Covent, being Patron thereof, reſtored to the ſaid Prior and Covent, and their ſucceſſors, in reſpect of their poverty, to hold the ſaid Vicarage reunited to the ſaid Church and Parſonage impropriate, with proper uſe, after the deceaſe of the ſaid Vicar, to the ſaid Prior and Covent, and their ſucceſſors for ever, Therefore the ſame is to be taken as a reſtitution, and not an impropriation of the Vicarage, and ſo the ſame is no appropriation of a Vicarage, made void by the Statute of 4 H. 4. Chap. 12. And further, for that the ſame Church and Parſonage of Laxton, was holden, together with the ſaid Vicarage, from, and after the death of the then Vicar, untill the diſſolution of the ſaid Priory, and at the time of the diſſolution, were holden as one intire Church, without any Vicar; ſo as the ſame Church and Parſonage came to the Crown by the diſſolution of the ſaid Priory, diſcharged of the ſaid endowment and of a Vicarage; and therefore the ſame neither can nor ought to be now preſented unto, nor enjoyed by any that ſhall claim the fruits thereof, the endowment was made as Vicar or Incumbent of the Vicarage; But that the ſame Church and Parſonage free of that endowment of a Vicar, were given by the Crown by force of that Statute, and of the ſurrender of the ſaid Prior and Covent, in as large and ample manner, and in the ſame plight as the Prior and Covent had or held the ſame; and if the ſame reſtitution or union had been any way defective, the ſame being good in reputation, the Statute of diſſolution of Monaſteries hath fully ſetled the ſame in the Crown, as by the two notable preſidents then ſhewed forth; the firſt being a Decree in Chancery, upon aid prayed, in caſe of the Lord St. John, in anno 29 Eliz. And the other, being a Decree in the Exchequer-chamber, between Thomas Crimes and Henry Smith, in Trinity Term, 30 Eliz. upon which reſolution of the ſaid Lords, Judges aſſiſtants, a Decree was had accordingly.

Michael. 7 Jacobi.

Netherſoles Caſe.

BY force of Diem clauſit Extremum, directed to the Eſcheator of the City of Canterbury, to enquire after the death of Edward Netherſole, what lands and tenements he held, the day of his death, of whom the ſame were holden, and who is his next heir; The Jury finde, Quod prædictus Edwardus in prædicto brevi nominatus, die ante obitum ſuum, & tempore mortis ſui, fuit ſeiſitus de & in duabus parcellis terræ continentibus per eſtimationem tres Rodas terræ, ſive majus ſive minus, unde una parceſſa inde vocata, a Hopgarden, in qua ſcituatur cottagium vocatum a

Hovill,

Hovill, & alia pecia inde vocata, a Hoppyard, jacentes in Parochia Sancti Petri, & prædictus Edwardus ſic de Præmiſſis ſeſitus exiſtens, idem Edwardus, 21 die Julii, jam ultimo præterito, demiſit prædictas tres Rodas terræ cuidam Gulihel. Watmar pro termino 50 annorum, & poſtea, ſcilicet, 3 die Septembris ultimo præterito, ante captionem hujus inquiſitionis apud civitatem prædictam obiit inde in forma prædicta ſeſitus, & quod Thomas Netherſall fuit infra ætatem 21 annorum, ſcilicet, 20 annorum, & quinque menſium, & Juratores prædicti ulterius dicunt, quod prædictæ tres Rodæ terræ, tenentur & tempore mortis prædicti Edwardi tenebantur, de dicto Domino Rege in Capite per ſervitium militare; ſed per quam partem feodi militaris, juratores prædicti pœnitus ignorant, & valent per annum 5 s. & inſuper Juratores prædicti ulterius dicunt quod prædictus Edwardus in brevi prædicto nominatus die obitus ſui, nulla alia, ſive plura maneria, terras, tenementa, ſeu hæreditamenta habuit, nec tenuit in civitate prædicta, de aliquo Statu, hæreditario in Dominico vel ſervitio tento de Domino Rege, vel de aliquibus aliis perſonis.

Queſtion. Whether the King might ſeiſe the body and lands, during the minority by force of this Office, no Eſtate being found, whereof Edward Netherſal died ſeiſed, And if not, then, Whether this Office may be ſupplied by a Melius inquirendum, and reſolved by the three Lords, chief Juſtices aſſiſtants, That the ſaid Office is not utterly void, but to be ſupplied by a Melius inquirendum, as well to perfect what Eſtate Edward Netherſole held, as of what Eſtate he died ſeized: whereupon a Decree was had accordingly.

Michael. 7 Jacobi.

Daviſon and Dymmocks Caſe.

THomas, late Earl of Suſſex, being ſeiſed in his Demeſne as of fee, in Arrere, and a half of land, lying at Weſton, in the County of Lincoln, did hold the ſame of the late Queen Elizabeth, as of her fee of Crown-land, of which fee the late Queen was ſeiſed in fee ſimple by abuittance. The ſaid Earl being ſo thereof ſeiſed, did procure licenſe from the late Queen, and ſuffered a common recovery thereof, (inter alia) whereby he made his wife a joynture, anno 24 Eliz. After which, the ſaid late Earl and his Countelle died, ſeiſed of the ſaid lands in Weſton, (inter alia) and the ſame deſcended to the now Earl, as coſin and heir to the ſaid late Earl, who ſold unto William Daviſon, late father of John Daviſon the ſaid acre and half in Weſton, in fee ſimple, which ſaid William Daviſon after dieth thereof ſeiſed in fee ſimple (inter alia) and the ſame deſcended unto John Daviſon, as ſon and heir unto William, as was found by Office, by vertue of a Quæ plura, taken after the death of William Daviſon, and it was thereby further found, that the ſaid acre and half, was holden at the time of the deceaſe of the ſaid William Daviſon, of the ſaid late Queen, and at the time of the taking of the ſaid inquiſition of the Kings Majeſty that now is by Knights ſervice in Capite.

Queſtion. Firſt, Whether the ſaid acre and half acre in Weſton be holden by Knights ſervice in Capite, or onely by Knights ſervice? Secondly, admitting the ſaid tenure ſhall onely be adjudged a tenure by Knights ſervice, and not in Capite, Then, Whether the ſaid John Daviſon, ſon and heir to William Daviſon, can by any Law be admited

to

to traverſe the tenure by Knights ſervice in Capite, found after the death of his father, as may give any other remedy by Law, And reſolved by Coke and Tanfield, that the ſuing of the license of alienation, is no concluſion unto the party, whereby the ſame lands ſhould become to be holden of the King in Capite, becauſe the words of the license are, (Quæ de nobis tenentur in Capite, ut dicitur) but yet that the ſame may be uſed as ſome part of evidence for the King to prove ſuch tenure, And the Lord Coke ſhewed that in Michaemas Term, 29 and 40 of Eliz. he being Attorney Generall, did move all theſe Judges upon a caſe in the Exchequer, which was, that the alienee by ſuch license, came into the Exchequer, and pleaded his license upon a quo titulo, and the Judges then reſolved, that neither the license nor a pardon, nor the pleading of them were any concluſion, to binde or ſtop the party, touching the ſuppoſed tenure in Capite, becauſe plea hath onely relation to the license or pardon, otherwiſe it is where the party is directly charged with a tenure, and he will confeſſe a tenure, as by Bene & Verum eſt, &c. for in ſuch caſes the plea is a concluſion, and therefore they reſolved, that the ſaid acre and the half, holden of the Queen, as of the fee of Crowland, was not holden by Knights ſervice in chief, but yet they further reſolved, that the Plaintiff might not traverſe the ſame Office, as the caſe was then drawn, for although it doth not appear in the caſe, that William Daviſon did die ſeiſed of any other lands, to the Wardſhip whereof the Kings Majeſty might be entituled by prerogative, by reaſon of the Office, finding a tenure in chief, and entituling the King by prerogative to all the lands, Therefore the ſame Lords Judges did leave the ſame to the further order of the Court, whereupon it was decreed accordingly, that the ſaid tenure ſhould be taken as a mean tenure and not a tenure in Capite, and that the heir giving ſecurity to the Committee, to pay 1000 marks for the value of his marriage, ſhould be admitted to his traverſe, &c.

Michael. 7 Jacobi.

Lucas Caſe.

PEter Lucas being ſeiſed in fee of the Manor of Fenton, in the County of Lincoln, dieth thereof ſeiſed, and the ſame deſcended to Brian Lucas his ſon, then within age, An Office is found whereby the dying ſeiſed and deſcent are found, and that the ſame Manor was holden of a common perſon by Soccage, and after the 33 of Eliz. by Melius inquirendum, the ſame is held of the Queens Majeſty by Knights ſervice, as of the fee of Gaunt, Brian Lucas, after his Office found, and before livery, or Oultre le maine, maketh a feoffment of the ſaid Manor and Demeſnes then in his occupation, to the uſe of his wife for a joynture for life, and after to the uſe of himſelf and his heirs, afterwards, in June 39 Eliz. he acknowledged a Statute of 400l. And after by his laſt Will deviſeth all his lands, except his wifes joynture during the minority of his heir for payment of his debts and legacies, and dieth, Anthony Lucas, his heir being then, and yet within age, and after his death, an Office found in 40 Eliz. wherein this Will and feoffment are found, the tenure, as before of a common perſon, and the nonage of the heir after theſe offices found, and after the death of Brian Lucas, an Extent is procured of two parts of the land, upon the Statute aforeſaid, and the land delivered in Extent, 41 Eliz. afterwards 43 Eliz. upon an-

other Melius inquirendum, the Manno is found to be holden of the Queen by Knights-ſervice as before. after the mother of Anthony Lucas, his Majeſties Ward, in February 45 Eliz. died, and afterwards in May following, a Leaſe of part of the land was granted to Thomas Sherſtone, during the minority of the heir, a Leaſe of the other part being formerly granted.

Queſtion. Whether this feoffment by the heir after the Office in 35 Eliz. and no livery, or ouſtre le mayn fuid, be intruſion within the Statute of Prærogativa Regis, the land not being holden by Knights ſervice. Admitting it to be an intruſion, Whether the Will made afterwards be good for any part, or whether the recognizance made by him ſhall charge the lands to be extended after the death of him the ſaid Brian Lucas, his heir within age, and the extent omitted out of the Office, Admitting the Will and Recognizance good, whether the Recognizance may be extended during the minority of the heir, upon the deviſes of the two parts, the inheritance and freehold thereof being in the heir within age? wherupon it was reſolved, by Coke, Flemming and Tanfield, upon mature deliberation, That, for as much as the ſaid Brian was within age, and Ward, and came to full age while the lands were in the Kings hands, therefore the feoffment being made after Office and a Tenure found, and before any ouſtre le maine fuid, is void, and his entry is intruſion, as well of theſe lands, being holden by Knights ſervice by a mean tenure, as if the ſame had been held by a tenure in Capite. And that although the Extent upon the words lands be a good Extent until it be avoided by Audita querela, yet becauſe it was made of the moity of the lands of a Ward. Therefore during the minority of a Ward, the ſame is within the protection, and is ſubject to the order and decree of this Court, notwithſtanding the ſaid Extent.

7 Jacobi Regis Hillary.

Bruſes Caſe.

THomas Bruſe, ſeiſed in his Demeſne as of fee of lands worth 10 l. per annum, holden of common perſons, and of 200 l. per annum in ſpeciall tail to him, and the heirs males of his body, and for default of ſuch iſſue, the remainder to William Bruſe brother of the ſaid Thomas, and to the heirs males of his body, with the like remainder to the third, fourth, fifth and ſixth brother, the reverſion in fee expectant to the right heirs of the ſaid Thomas Bruſe; Thomas Bruſe dies without iſſue male, leaving two daughters within age, an Office is found after his death, and deſcent of the fee-ſimple lands in poſſeſſion to the ſaid daughters, and of the reverſion of the intailed land expectant upon the ſaid limitations, and a tenure in Capite by Knights ſervice onely of reverſion deſcended. The Wardſhip of the ſaid daughters, in reſpect of the deſcent of the reverſion is granted by the King for the fine of 10 l. and their lands in poſſeſſion holden of common perſons, leaſed by the Court of Wards during their minority for a fine of eight pounds, after that, William Bruſe the tenant in tail, in poſſeſſion dies, having iſſue John Bruſe, his ſon and heir male, an Office is found after his death, and a like tenure in chief found, of the land deſcended to the iſſue in tail, as was before of the reverſion, the Wardſhip of the ſaid iſſue in tail is granted by the King for a fine of 200 l. and the lands Leaſed by the Court

Court for a fine of during the minority, the heirs generall accomplish their full age, the heir male being yet in Ward, and of the age of ten years, or thereabouts.

Queſtion. Whether the Kings Majeſty by his Prerogative, ſhall have the wardſhip, livery and primer ſeiſin of the iſſue in tail, and of the heir in reverſion at one time, and in reſpect of one tenure, and if not, how his Majeſtity ſhall determine his election?

Whereupon it was reſolved by Flemming, Coke and Tanfield, upon mature deliberation, That the King being intituled to the wardſhip of the heirs generall in right of the reverſion in fee, and having ſeiſed and granted the ſame, when afterwards the tenant in tail dieth, and lands being holden of that reverſion deſcend in poſſeſſion to the iſſue in tail, the King was intituled to the wardſhip of the iſſue in tail, by cauſe of Ward, and ſo the King is to enjoy both the wardſhips, But as touching any livery to be ſued of the reverſion, by the heirs generall, being now come of full age, they left the ſame to the conſideration of the Court, whereupon, and for as much as it appeareth upon the view of the Office, after the death of William Bruſe, that the King is intituled by that Office to the wardſhip of the heir of William Bruſe, in the right of an immediate tenure by his Prerogative, and not in right of the reverſion, as to a ward, by cauſe of ward, no mention being made in the ſaid Office, that the heirs of Thomas Bruſe now then in ward to the reverſion, and the Writ upon which the ſame was found, being generall, and not ſpeciall, yet ought to have been, ſo that the heir of William Bruſe is at his full age to ſue a livery of the whole lands in poſſeſſion, in right of an immediate wardſhip, and not as ward, becauſe of ward, and untill liveries ſued, the lands are in the Kings hands, as in right of an immediate Prerogative tenure, And as touching the livery and primer ſeiſin, ſuppoſed by the Auditors of this Court, to be due and anſwerable for the wardſhip of the heir in reverſion, for as much as it appears, that the poſſeſſion is, and ought to be, and muſt remain in his Highneſſe hands, by reaſon of the minority of the iſſue in tail, for divers years yet to come; ſo as his Majeſties hands by the proſecution of ſuch livery cannot be remedyed; And for that alſo, the ſaid heirs in reverſion, (in caſe the poſſeſſion of the ſaid lands were not in his Majeſties hands as aforeſaid) are not compellable by the Law to ſue a livery, untill the particular Eſtates were determined, which in this caſe is never likely to take effect, as well in regard of the ſeverall limitations of the ſaid intails, as alſo in reſpect of the power given to the tenants in tail, by a common recovery, to cut off and deſtroy the ſaid reverſion, And the rather, becauſe the Kings Majeſty ſhould have no benefit by ſuch livery, the ſame being under value. Whereupon it was decreed accordingly, and that the heirs generall of Thomas Bruſe, ſhould be diſcharged of ſuing any livery.

Hillary 7 Jacobi Regis.

Coles Caſe.

GEorge Coles, father of the ſuppoſed Ward, having a wife, purchaſed certain lands in Capite, holden of Sir Francis Tanfield, Knight, which are found by the Offices to be purchaſed by fine and Indentures, leading the uſe of the fine as followeth: To the uſe of the ſaid George

George Coles, and of the heirs males of his body, which he ſhall beget of the body of any wife, which he ſhall hereafter marry, and for default of ſuch iſſue, then to the uſe of Thomas Coles the ſuppoſed Ward, then ſon and heir apparent of the ſaid George Coles, and of the heirs of the body of the ſaid Thomas lawfully coming, and for default of ſuch iſſue, then to the uſe of the right heirs of the ſaid George Coles for ever. George Coles dieth, and the wife which he had at the time of purchaſe ſurviveth.

Queſtion. Whether Tho. Coles the ſon ſhall be in ward to the Kings Majeſty, or not, and reſolved by the Attorney and Court, That no wardſhip is due, and a decree drawn up accordingly.

Hillary 7 Jacobi Regis.

Sir Allan Percyes Caſe.

IN a caſe depending in this Court, by information preferred on the behalf of Sir Allan Percy Knight, and Dame Mary his wife, which Dame Mary was daughter and heir of Sir John Fitz, Knight, deceaſed, againſt Dame Bridget Fitz, Defendant, upon the ſaid information and confeſſion, and anſwered by way of admittance on either part, A Queſtion in Law did ariſe, Whether the ſaid Sir Allan Percye might lawfully fell down the timber-trees, growing on a tenement or ground, called Raniſham-wood in the County of Devonſhire, the truth being, the ſaid Sir Allan had felled divers of the ſaid trees, whereupon a caſe was agreed upon as followeth, videlicet, by an Indenture, dated 20 Martii 4 Eliz. made by Sir John Fitz: late huſband of the ſaid Bridget, the ſaid Bridget pretended a Tenement, called Raniſham, whereof the ſaid Raniſham-wood is parcell, to have been conveyed to the uſe of the ſaid Sir John Fitz, and the ſaid Bridget then his wife, for their lives, and after their deceaſe then to the uſe of the ſaid Sir John Fitz, and the heirs of his body, on the body of the ſaid wife. And for default of ſuch iſſue, to the uſe of the ſaid Sir John Fitz, and the heirs of his body lawfully begotten, and for default of ſuch iſſue, to the uſe of the ſaid Bridget and the heirs of her body, and for default of ſuch iſſue, to the uſe of the ſaid Sir John Fitz, and his right heirs for ever, afterwards the ſaid Sir John Fitz and his wife, demiſed the ſaid Tenement, by Indenture, to one William Sprey, excepting all the timber, Oak, and Aſh, growing and being in and upon the Premiſſes, or hereafter, to be grown, with free liberty and licenſe to fell, cut down, and carry away at the wils and pleaſures of the ſaid John and Bridget, and ſuch other perſon and perſons, as ſhall be inheritable to the Premiſſes after the deceaſe of the ſaid John and Bridget, Habendum for years yet enduring, rendering rent, which Leaſe was after made good by fine levied by the huſband and wife, and after Sir John Fitz died, having no iſſue, but the ſaid Mary his onely daughter within age, who became Ward to the King, Bridget after the death of Sir John Fitz, accepted the rent reſerved upon Spreyes Leaſe, The Kings Majeſty granted the wardſhip and marriage of the ſaid Mary to Sir Allan Percy, who hath married her to himſelf ſince ſhe came to her age of conſent, and ſince her marriage, the ſaid William Spreye hath demiſed to the ſaid Sir Allan Percy, Raniſham-wood for 7 years.

Queſtion. Whether Sir Allan upon the matter above appearing may not lawfully fell, cut down and ſell the timber-trees growing in the ſaid Raniſham

Raniſham-wood, Whereupon the three Lords, Flemming, Coke, and Tanfield, reſolved. That the ſaid Sir Allan Percy ought not to have felled the ſaid trees, nevertheleſſe, it was lawfull for him to have carried away thoſe trees that then were formerly felled, and lying on the ground, whereupon a Decree was had accordingly.

Trin. 8 Jacobi Regis.

Crawleys Caſe.

IT was found by Office, by vertue of a Mandamus, That William Crawley was ſeiſed in fee of the Manor of Wells, alias Wellery in the County of Hartford, holden of the King in Capite, and that he, the tenth day of January, 29 Eliz. enfeoffed thereof, Richard Crawley his ſon and heir apparent, and William Crawley the ſon of the ſaid Richard, to the uſe of them two and their heirs heirs, by force whereof they were ſeiſed; William Crawley the Grandfather died 30 Eliz. Richard being then of age 30 years.

Queſtion. If Livery ought to be ſued by Richard Crawley? if yea, Whether of a third part of all, or of a third part of a moity? whereupon it was reſolved by the three Lords, chief Juſtices and chief Baron, Flemming, Coke and Tanfield, That Richard ought to ſue Livery but of a third part of a moity of the ſaid Manor, videlicet, of that moity, which was conveyed to the ſaid Richard Crawley, the ſame being an advancement within the Statute; but not of that moity which was conveyed to William the grandchild, the ſame being no ſuch advancement, whereupon a Decree was had accordingly.

Trin. 8 Jacobi Regis.

Allicocks Caſe.

WHereas a Livery is to be ſued by John Allicock, after the death of Jane Barker, formerly the wife of William Allicock Eſquire, deceaſed, of, and for the Manor of Sibbertoft, in the County of Northampton, for deciding whereof, a Caſe was made as followeth: videlicet, William Allicock, ſeiſed in fee in the right of Jane his wife, They levied a Fine to the uſe of themſelves for their lives, for one moity, the remainder thereof to John their ſon, and heir apparant in tail, the remainder to the right heirs of John; This moity, John, after the death of William, levies a Fine to the uſe of Thomas his ſon, and heir apparant, and Bridget his wife, and the heirs of the body of Thomas, the remainder to the heirs of Thomas, Then Jane dieth, then this is found by Office after her death.

Queſtion. Whether John ſhall ſue Livery, And reſolved by Flemming, Coke and Tanfield, That becauſe John had conveyed away the Eſtate which was executed to him for his advancement, before the death of Jane the Anceſtor, by whom the advancement was, therefore he ought to ſue no Livery for the ſaid moity, which was decreed accordingly.

Trin. 8 Jacobi.

Scowrefields Case.

A being ſeiſed of Lands in W. and S. held of the Kings Majeſty as of his Mannor of Stainton, by Knights-ſervice, ſuit of Court, Die 15 to 15, and the rent of a halfpeny, as appeareth by ancient Offices, Records and other Evidences, did die thereof ſeiſed, his ſon and heir B. being an Infant, whereupon in an Office after his death, it is expreſſed, that A. tempore mortis ſui, tenuit Tenementa prædicta de Domino Rege per ſervitium Militare, & per liberum & annualem redditum, unius oboli, & per ſervitium ad Curiam ſuam de Stainton de 15 in 15 vel per majus tempus ad placitum ſolum. Whereupon in the Court of Wards, as well upon view of former Offices, Records, and other Evidences concerning the tenure of the ſaid Land, as the Teſtimony of divers witneſſes, It was ordered, that B. the party grieved, ſhould be admitted to traverſe the Office in point of the Term in Capite, which was omitted; So that B. at his full age, ſued a generall Livery, and then after, B. did ſell ſome part of the ſaid Lands unto John Scowerfield, who after died thereof ſeiſed, his ſon and heir being of full age.

Queſtion. Firſt, Whether now by Office, after the death of John Scowerfield, the antient and true tenure might be found, notwithſtanding the former Office, and generall Livery ſued by B. ea that the Jury be ſtopt and concluded by the ſaid Livery and Office.

Secondly, The order following the Traverſe being made, 5 Eliz. Whether, now B. yet living, may proceed in the ſaid Traverſe, And if therein it may be found for him, how far it will relieve the heir of John Scowerfield, Whereupon it was reſolved by Flemming, Coke, and Fanfield, That ſuch Jury as ſhall hereafter enquire of the tenure of the ſaid Lands, are not, nor ſhall not be ſtopt, and concluded by the ſuing of the ſaid Livery, and finding of the ſaid Office, but that they may finde the truth of the Tenure, notwithſtanding the ſuing of the ſaid Livery; and finding of the ſaid Office, whereupon a Decree was had accordingly.

Trin. 8 Jacobi Regis.

Barhams Case.

Exception being taken to the Office found, after the death of Nicholas Barham, Serjeant at Law, a Caſe was agreed unto as followeth; videlicet, The firſt inquiſition upon the Diem clauſit Extremum, was found the 16 of November, 19 Eliz. And thereby it was found, that Nicholas Barham was ſeiſed of divers Lands, die obitus ſui, but it was not thereby found of what Eſtate he was ſeiſed of thoſe Lands, nor that he died ſeiſed of ſuch Eſtate, nor no tenure by Knights-ſervice in chief, nor otherwiſe by Knights-ſervice was found thereby, but that he died 25 Julii ultimo præterito, And that Arthur Barham was his ſon and heir, of full age at his deceaſe, whereupon a Melius Inquirendum by Commiſſion, bearing, Teſt. 28 Novembris, 22 Eliz. was awarded, but in this generall form; videlicet, Quia prima inquiſitio in diverſis rebus,

rebus, materiis & reſpectibus minus ſufficiens eſt, Ideo, &c. And did not contain any commandment, to enquire of any theſe ſpeciall points declared in the firſt inquiſition, and by the inquiſition thereupon, it was found, that the ſaid N. B. fuit ſeſitus de hujuſmodi Statu prout in prima inquiſitione apparet, In which was no Eſtate expreſſed, neither was there found by inquiſition, any other better tenure then in the former, Whereupon a Writ of Qua plura, bearing Teſte 4 Julii 7 Jacobi, was awarded in this form; videlicet, Quia datum eſt nobis intelligi, quod Nicholaus Barham, nuper ſerviens ad Legem, qui de nobis tenuit in Capite tenuit die quo obiit plura terras & tenementa quam, &c. ſpecificabuntur, Ideo tibi præcipimus quod inquiras quæ plura terras, &c. Idem Nicholaus tenuit die quo obiit, & de quo tenentur, & per quod ſervitium, And by the inquiſition thereupon it was found, That the ſaid N. B. was ſeiſed of eight acres in Cobham, called Bakers, alia & plura, then thoſe ſpecified in the firſt inquiſition, And that thoſe eight acres, called Bakers, at the death of the ſaid Nicholas tenebantur de prædicta Domina Regina, & modo tenentur de dicto Rege nunc per ſervitium militare in Capite, Whereupon a Writ of Melius Inquirendum bearing Teſte 3 Novembris, 7 Jacobi was awarded, whereby is recited; videlicet, Cum per inquiſitionem 16 Novembris 19 Eliſabethæ poſt mortem N. B. ſervientis ad legem defuncti captam, Compertum eſt quod prædictus Nicholaus die quo obiit fuit ſeſitus de & in Manerio de Chillington in Waldſtone, & de Manerio de Halleplace in Warming, ac de diverſis aliis terris, in Cobham, & Luddeſwone in Comitatu prædicto tentis de nobis, & de diverſis aliis Dominis in Soccagio, ut per prædictam inquiſitionem patet, Et quia non accipimus quod prædictum Manerium de Chillingſtone, & Halleplace, & alias terras in Cobham, & Luddeſdown, in priori inquiſitione ſpecificatas tenentur, & tempore mortis prædicti Nicholaii tenebantur de nobis in Capite per ſervitium militare, vel aliter de nobis per ſervitium militare, And by the inquiſition thereupon found, it is found thus; videlicet, Quod prædictum Manerium, &c. Ac omnia alia Meſſuagia, &c. in Cobham & Luddeſdown, in Comitatu prædicto e exceptis octo acris terræ, in Cobham prædicto vocatis Pokis nuper poſſeſſionum, nuper diſſoluti Collegii de Cobham, in Cobham prædicta in inquiſitione Capta, prædicto 16 Novem. 19 Eliz. prædicti poſt mortem prædicti Nicholaii B. in inquiſitione prædicta mentionatam ſpecificatur, tempore mortis prædicti, Nichol. & tempore captionis prædicti recitatur inquiſitionis non tenebantur, nec aliqua pars inde tenebantur de dicta Domina Eeliſabetha Regina, &c. Et quod prædictæ oct. acræ terræ vocatæ Pokis in Cobham prædicto tempore mortis prædicti Nicholaii B. Et tempore captionis prædictæ recitatæ inquiſitionis tenebantur de Domina Eliſabetha nuper Regina Angliæ in Capite per ſervitium militare.

Queſtions, Firſt, Whether the ſaid Offices upon the ſaid Quæ plura, and the laſt, Melius inquirendum, are void in Law, or not?

Secondly, Whether either of them be void, and whether of them?

Thirdly, If not void, Then, Whether the King be ſufficiently intituled by them, or either of them, whereupon Livery may be ſued?

Whereupon conſideration being had by the Lords chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, That in regard that in the ſaid firſt inquiſition there is no certain Eſtate found, whereof the ſaid Nicholas Barham was ſeiſed, and died ſeiſed of the Lands and Tenements therein mentioned, or any tenure of the ſaid late Queens Majeſty, of any of the ſaid Lands, And that the ſaid ſecond inquiſition found by vertue of the ſaid Commiſſion of a Melius inquirendum, finding

but

but that he was seised of such Estate, as appeareth in the first inquisition, no Estate at all being therein found, and no better or other term; That therefore the said inquisition, upon the said Melius inquirendum was void, and that the said Quæ plura and last Melius inquirendum, and inquisition thereupon found, being grounded on the former inquisition, wherein the King was formerly not intituled to any lands at all, and so no cause at all to enquire of plura, untill a seisin; and dying seised of some lands, had been formerly found, as well the said Quæ plura, as last Melius inquirendum, and both the said inquisitions thereupon found; as also the said first Melius inquirendum, and inquisition thereupon found, are of no force or validity in Law, but merely void in Law to all intents and purposes, whereupon a Decree was had accordingly.

Trin. 8 Jacobi Regis.

Golseys Case.

BY Inquisition taken at Sheston in the County of Dorset, 21 January, 6 Jacobi, by vertue of a Writ of Diem clausit extremum, to enquire after the death of William Golsey, It is found that the said William Golsey, the day of his death, was seised in his Demesne as of Fee, of, and in one Capitall Messuage, or Scite, called, or known by the name or names of Gray Friers, or the Friers, or the Friery of Dorchester, with the appurtenances, and of and in two Water-mills, or Oyle-mills, called the Friory Mills, and the Friers Mills and of, and in four acres of meadow and pasture, scituate, lying and being in vel prope, Dorchester prædictam in the County of Dorset; and the said William Golsey, of all and singular the premisses, with the appurtenances, being so seised, died thereof so seised, 26 November last, before the taking of the inquisition.

Question. Whether this inquisition be so uncertain and insufficient, that it is void, and that a Mandamus must go forth, or whether it may be supplied by Melius inquirendum; whereupon it was resolved by the Lords, chief Justices, and chief Baron, Fleming, Coke, and Tanfield, That the said inquisition was utterly void; and could not be supplied by any Melius inquirendum, because the finding in vel prope Dorchester, hath certainty neither of town nor County, whereof the view should come, if the Office were to be traversed; for it must be near Dorchester, and yet not in the town or county of Dorchester, whereupon a Decree was had accordingly.

Trin. 8 Jacobi Regis.

Sadlers Case.

SEcond of December, 35 Eliz. It is found by Office, taken at Hartford, That Ralph Sadler, being seised of the Manor of Temple Dynesly, in the County of Hartford, did covenant by Indenture, 25 October, 12 Eliz. to levy a Fine of the said Manor, to certain persons, strangers to the Indenture, and that all that should be seised thereof, should stand seised, to the use of Sir Ralph, during his life, and after, to the use of his younger son, Edward, and Anne his wife, and the heirs of the body of Edward,

Edward, begotten upon the ſaid Anne, and for default of ſuch iſſue, to the uſe of the heirs of the body of the ſaid Edward, and for default of ſuch iſſue, to the uſe of the ſaid Sir Ralph, his heirs and aſſignes for ever. Hillar. 13 Eliz. a Fine was levyed accordingly: 4 Aprilis, 26 Eliz. Edward Sadler died, having iſſue by Anne, Lee Sadler his ſon and heir. Sir Ralph Sadler dieth, Anne enters for the remainder, Lee Sadler died, having iſſue, Thomas his ſon and heir, under age, Anne living.

Queſtion. Whether Thomas Sadler, ſon of Lee Sadler, ought to be Ward, during the life of Anne his Grandmother? And decreed by the Court, that he ought not to be in Ward, during his Grandmothers life; and in regard ſhe lived till the ſaid Thomas attained unto his full age, he was diſcharged by Decree, both of value of marriage, and otherwiſe.

Paſch. 8 Jcobi Regis.

Darwins Caſe, an Ideot.

A Commiſſion of Ideota inquirenda, was awarded to Sir William Hickman, and others, to enquire, whether Edward Darwin were an Ideot, and whether, in eodem Statu exiſtens terras, vel tenementa aliqua alienavit necne, & ſi ſic, tunc, quas terras & quæ tenementa, ubi, vel cui, vel quibus, & in cujus, vel quorum manibus exiſtunt, & qualiter, & quomodo? By vertue of which Commiſſion, was found at Quinborrough in the County of Lincoln, 10 Septembris, 5 Jacobi Regis, Quod ſuper inſpectionem, & perſonalem examinationem prædicti Edwardi Darwin, coram tam dictis Commiſſionariis quam Juratoribus prædictis, quod dictus Edwardus Darwin, Fatuus eſt, & Ideota; & ſic a nativitate ſua hucuſque fuit, & adhuc exiſtit, ita quod Regimini ſui ipſius non ſufficit, & ulterius quod prædictus Edwardus Darwin, 1 Januarii, 5 Eliz. jure hæreditario poſt mortem Leonardi Darwin, patris ſui defuncti ſeſitus fuit in Dominico ſuo, ut de feodo, de & in uno Bovato Terræ in Blighton, modo in tenura Thomæ Rands, Ac de & in diverſis terris & tenementis in Warton, in dicto comitatu, tunc in manibus dicti Thomæ Rands, quæ quidem terræ & tenementa prædictus Edwardus Darwin alienavit cuidam Johanni Peak generoſo, After which iſſued out a Commiſſion, bearing date, 18 Junii, 6 Jacobi Regis, in the nature of a Melius inquirendum, whereby it is recited; That whereas, by an inquiſition, 10 Septemb. 4 Jacobi Regis, (whereby was intended the Commiſſion aforeſaid) which was, indeed, taken anno 5, by vertue of a Commiſſion, De Ideota inquirenda, to enquire of the Ideocie of Edward Darwin; It was found, (inter alia) quod prædictus Edwardus alienavit diverſas terras & tenementa, in the ſaid inquiſition ſpecified, Nos volentes plenius certiorari de Præmiſſis, It was by the ſame laſt inquiſition commanded to enquire, Qualiter, & quomodo, alienatio in prædicta inquiſitione mentionata facta fuit, & ſi facta fuit per finem, tunc quis dictum finem levavit; By force of which laſt Commiſſion, a ſecond inquiſition was found in the ſaid County, 9 Septembris, 6 Jacobi Regis, whereby the points of the ſaid laſt Commiſſion were recited to be thus, videlicet, Qualiter & quomodo quædam terræ & tenementa jacentes & exiſtentes in Blighton & Warton in Comitatu prædicto fuerunt alienata, & ſi fuerunt alienata per finem, tunc ulterius ad inquirendum, per quem terræ & tenementa prædicta fuerunt alienata, Quæ quidem terræ, & tenementa continentur, & ſpecificantur in

priori inquiſitione capta apud Quinsborough prædictam, coram Willielmo Hickman, Miles, &c. By vertue of the ſaid former Commiſſion, Quæ quidem terræ & tenementa ſunt mentionata in prædicta priori inquiſitione, fore in manibus, & poſſeſſione dicti Thomæ Rands. And by the ſaid laſt inquiſition, it is found thus; viz. Quod quidem Edw. Darwin filius & hæres cujuſdam Leonardi Darwin defuncti, per factum ſuum gerentem datum, 28 Februarii 15 Eliz. in conſideratione 108 l. per Johannem Peak, præfato Edwardo Darwin ſoluto, dedit & conceſſit prædictas terras & tenementa præfato Johanni Peak, hæredibus & aſſignatis ſuis, ad opus & uſum præfati Johannis Peak, hæredum & aſſignatorum ſuorum in perpetuum, & poſtea in octabis Sancti Michaelis, 15 Eliz. prædictus Edwardus Darwin, coram, &c. Levavit quendam finem præfato Johanni Peak de terris & tenementis prædictis cum pertinentiis; And reciteth the Fine to be a Fine, Comme ceo que il ad de ſon done, with reference to the Record of the Fine it ſelf, And then is ſet down an examplification of the Fine, in hæc verba, which is, inter Johannem Peak querentem & Edmundum Darwin filium & hæredem Leonardi Darwin deforceantem, And finde further in this manner, videlicet, quod dicta perſona nominata per nomen Edwardi Darwin, in dicta priori inquiſitione, eſt eadem perſona, quæ nuncupatur Edwardus Darwin in hac inquiſitione, & in Charta & in fine prædicta, & ſunt una & eadem perſona & non diverſa.

Queſtion. Whether upon all the matter aforeſaid, the Kings Majeſty be ſufficiently intituled to all the Lands, or any part thereof, whereupon it was reſolved by the Lords, chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, That the firſt inquiſition, de Ideota inquirenda, and the firſt inquiſition found by vertue thereof was ſufficient to intitle his Majeſty to the cuſtody of the ſaid Ideot, and all his lands, in the ſaid inquiſition mentioned, and that the ſaid Melius inquirendum, and inquiſition thereupon taken, was utterly void, according to which reſolution, the ſaid Court was reſolved to have decreed, but then it appeareth, that the ſaid Edward Darwin was no Ideot, and thereupon all former proceedings were diſcharged.

8 Jacobi Regis.

Sir John Cutts Caſe.

SIr John Cutts Knight, and Dame Anne his wife, Sir Thomas Chychley, and Lady Dorothy his wife, Sir Dudley Digges Knight, and the Lady Mary his wife, as in the right of their ſaid wives, And Amy Kempe, as in her own right, being the daughters and coheirs of Sir Thomas Kempe, deceaſed, exhibited their Bill into the Court of Wards, in the nature of a Petition of Traverſe, thereby ſhewing, That whereas Sir Thomas Kemp Knight was ſeiſed in Fee of the Caſtle and Manor of Chilkham, with the appurtenances, in the County of Kent, of which Manor of Chilkham, the Manor of Luddeham, in the ſaid County of Kent, was holden by Knights ſervice, And that the ſaid Sir Thomas Kempe dying ſo ſeiſed of the ſaid Manor of Chilkham, the ſame deſcended to his ſaid daughters and coheirs, By vertue whereof, the Complainants in the right of their wives, and the ſaid Amy, entred, and were ſeiſed in Fee, and being ſo ſeiſed, one John Driland Eſquire, being ſeiſed in Fee of the ſaid Manor of Luddenham, died ſeiſed thereof,

of, and the ſame deſcended to John Driland his ſon and heir, who is found by Office to be within age, and that the ſaid Mannor of Luddenham was holden of his Majeſty by Knights-ſervice in Capite, and thereupon, that the Wardſhip and lands of the ſaid John Driland were commited and granted by his Majeſty to one George Deering, by which Bill they humbly deſire, to be admitted by the Court of Wards, to traverſe the ſaid Office in the point of the tenure, and prayed proceſſe of priv Seal againſt the ſaid Committee, to anſwer the ſaid Bill. To which Bill the ſaid Committee did make anſwer, and thereby did averre and maintain the ſaid Office, after which, there was a Plea exhibited in the ſame Court, in the name of his Majeſties Attorney of the ſaid Court. on the behalf of his Majeſtie ſetting forth, That Sir Thomas Kemp died ſeiſed in Fee of the Mannor of Chilkham, and of divers other Mannors and Lands in the ſaid County of Kent. And that the ſame deſcended to his daughters, And that Sir Dudley Diggs and his wife, after the Bill exhibited, and before the Defendants anſwer, did bring a Writ of Partition againſt the other Plaintiffs, in the Bill of Traverſe, and ſo far it was proceeded in, that a Judgement was given, that Partition ſhould be made; and thereupon a Partition was made by the Sheriff, by vertue of a Writ, and that upon that Partition, The Mannor of Chilkham, with the appurtenances, was aſſigned to Sir John Cutts and his wife, to hold in ſeverality, and thereupon they entred there into, and were thereof ſole ſeiſed, and other lands were ſeverally aſſigned to the other copartners, and therefore demanded Judgement of their Bill, and prayeth that the ſame may abate.

Queſtion. Whether the Bill of Traverſe be abated? whereupon it was reſolved by the Lords, chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, That the ſaid Petition to be admitted to traverſe, And that this Court might admit the Plaintiffs, or any of them to traverſe the ſaid Office, without Bill, or in other manner then is deſired by the ſame Bill, if the Court ſhould think fit, That therefore this Court might proceed to examine the cauſe of Traverſe, it not being requiſite to follow the courſe of Law therein, but a courſe of diſcretion and equity, ſaving, That if there be no juſt cauſe of Traverſe, Then the Bill of Traverſe is to abate, Whereupon a Decree was had accordingly.

8 Michaelis Jacobi Regis.

Gardiners Caſe.

IT is found by Inquiſition taken at the Bayl of Lincoln in the County of Lincoln, 24 Septembris, 2 Jacobi, virtute brevis poſt mortem Stephani Gardiner, That the ſaid Stephen Gardiner the day of his death was ſeiſed in his Demeſn as of fee, of and in one capital Meſſuage, and divers Lands particularly mentioned in the Inquiſition lying in the Townſhips of Fursby and Steeping in the ſaid County: and that the ſaid Stephen Gardiner dyed ſeiſed of the premiſſes with the appurtenances, at the time of the taking of the ſaid Inquiſition: and at the time of the death of the ſaid Stephen Gardiner were holden of Euſtace Hart Eſquire, and of the right honorable the Lady Mary his Wife, as in the Right of the ſaid Mary by Knights-ſervice, as of their Mannor of Steeping in the ſaid County, which Mannor of Steeping the ſaid Euſtace,

Euſtace and the ſaid Lady Mary his Wife, had and held, for and in the name of her Dower, William Gardiner being Son and Heir of the ſaid Stephen, and within age, after the return of which ſaid Office, it was found by another inquiſition taken at Sleaford in the ſaid County, 16 Januarii, 6 Jacobi virtute Commiſſionis, in natura brevis de melius inquirendum, poſt mortem dicti Stephani Gardiner; That the ſaid Premiſſes in Fursby aforeſaid, at the time of the ſaid taking of the inquiſition, and at the time of the death of the ſaid Stephen Gardiner, were holden of Sir Edward Carre Knight, as of his Manner of Monkthorp, in the ſaid County, by the yearly rent of 5 s. but by what other ſervices, the Jury knew not, And that all and ſingular other the Premiſſes, at the time of the taking of the ſaid inquiſition, and at the time of the death of the ſaid Stephen Gardiner, were holden in manner and form, and by the ſame ſervices, as in the ſaid inquiſition, and in the ſaid Commiſſion mentioned, is contained and ſpecified.

Queſtion. Whether his Majeſty be not concluded by theſe two inquiſitions, ſo as no new Melius inquirendum may be awarded, to enquire better of the Tenure of the ſaid Lands, after the death of the ſame Anceſtor?

Secondly, admitting that the ſaid Land, or ſome part thereof, is holden in truth of his Majeſty, whether a new Melius inquirendum can lie in the caſe? Whereupon it was reſolved by the Lords chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield; for as much as the Commiſſion in the nature of a Melius inquirendum awarded after the death of the ſaid Stephen Gardiner was executed, and by vertue thereof, an inquiſition was taken and returned, whereby the tenures of the ſaid Lands mentioned in the ſaid former inquiſition, were found to be holden of common perſons, and not of his Majeſty, Therefore no new Melius inquirendum could be awarded to enquire better of the tenure of the ſaid Lands, But the ſaid Judges were of opinion, that if there were record to prove a tenure for his Majeſty, That then a Scire facias would lie upon the Statute of Lincoln to ſeiſe the ſaid Lands, but no Melius inquirendum, or new Office in the caſe could be found, or proceeded in, whereupon a Decree was had accordingly: See 8 Coke, fol. 169 Paris Slaughters Caſe.

8 Jacobi Regis.

Gages Caſe.

THe King at Weſtminſter, 4 Maii, 5 Jacobi, made certain Letters Patents, ſealed with the great Seal of England, containing that his Majeſty did thereby grant the Manner, Grange, & Rectory of Atingham, alias Acham, in the County of Salop, unto William Rich, and Thomas Darrel for their lives, and the life of the longeſt liver of them, rendering therefore yearly to his Majeſty, his heirs and ſucceſſors, during their lives, and the life of the longeſt liver of them 36 l. 18 s. 4 d. at two Feaſts, And containing alſo, that his Majeſty, by the ſame Letters Patents, did grant the reverſion of the Premiſſes and the ſaid yearly rent of 36 l. 18 s. 4 d. to one John Gage, who was then within age, and in ward to the King, for other lands to him deſcended from his Uncle, but is now of full age, To have and to hold the ſaid reverſion and rent to the ſaid John Gage, and the heirs of his body, the remainder to the

heirs

heirs of the body of one Sir John Gage Knight, deceaſed, rendring therefore yearly to his Majeſty his heirs and ſucceſſors, from the making of the ſaid Letters Patens, unto the full age of the ſaid John Gage, of 21 years, (if he ſhould ſo long live) the yearly Rent of 36 l. 18 s. 4 d. at two Feaſts, to be paid to the Receiver Generall of the Court of Wards, under the ſeal of that Court, to levy the arrerages of the ſaid Rent. in hæc verba &c. againſt the occupiers or collectors of the Rents of the Lordſhip, Manor, Grange, and Rectory of the Church of Althingham, alias Altham, with all the rights, members and appurtenances, in the County of Salop, of a certain yearly Rent of 36 l. 18 s. 4 d. reſerved to the King and his heirs out of the Premiſſes, in the County aforeſaid, to be paid during the minority of John Gage, ſon and heir of Thomas Gage Eſq. deceaſed Ward of our ſoveraign Lord, the King, as by his Majeſties Letters Patents, dated 4 of May, 5 Jacobi, appeareth, That is to ſay, From the Annuntiation of our Lady, 5 Jacobi, untill the ſame Feaſt, 8 Jacobi, due for three years after the rate aforeſaid, by year, as yet behinde unpaid, 110 l. 15 s.

Queſtion. Whether the tenants ought to anſwer to this charge in the Court of Wards, or not? Whereupon it was reſolved by the Lords, chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, that this Court cannot make any charge upon the ſaid Letters Patents, nor award any Proceſſe for the levying of any profits of the ſaid Premiſſes, whereupon a Decree was made accordingly.

Paſch. 9 Jacobi Regis.

Prices Caſe.

JAmes Price, being ſeiſed in Fee-ſimple of a Meſſuage in Yerlſtone, in the County of Pembroke, holden of the late Queen, as of her Burrough of Carewe by Knights-ſervice, 4 Auguſt, 34 Eliz. did by Deed indented, give the Premiſſes to Jenkin Price his brother, Habendum, to Jenkin and the heirs of the body of the ſaid Jenkin, lawfully begotten; and for default of ſuch iſſue, to the uſe of the ſaid James Price, and his heirs for ever, After, viz. the 19 Octob. 41 Eliz. Jenkin Price died, ſeiſed of the Premiſſes, William Price his ſon and heir being of the age of eight years.

Queſtion. Whether William, the heir of Jenkin ſhall be in Ward to the King, And reſolved by the two chief Juſtices, and the chief Baron, Flemming, Coke, and Tanfield, That the ſaid William ſhall be Ward to his Majeſty, whereupon it was ordered accordingly.

Trin. 9 Jacobi Regis.

Milners Caſe.

IT was found by inquiſition, taken the 20 of February, 6 Jacobi Regis, by vertue of a Writ of Mandamus, awarded, 6 Jacobi Regis, to enquire after the death of Richard Milner, That the ſaid Richard Milner, long before, and at his death, was ſeiſed in his Demeſne as of Fee, of, and in the Manor of Lillyſtone, with the appurtenances, in the County of Middleſex, and of, and in the 14 Meſſuages, &c. That the ſame Lands,

Tenentur de Domino Rege in Capite by the fourth part of Knights Fee prout compertum fuit is per literas patentes Regis Ed. 6. dated the 17 of Auguſt, anno 2. and were worth per annum, above repriſes, 5 l. &c. That John Milver is the ſon and next heir of the ſaid Richard Milver, and was of four years of age, and no more at the time of the death of the ſaid Richard, And that the ſaid Richard died ſeiſed of, and in, the Premiſſes 21 of October, 36 Eliz. And that one John Haines Eſquire, ever ſince hath taken the profits, untill the taking of the ſaid inquiſition.

Queſtion. First, whether the ſaid Office be good in Law?

Secondly, whether the ſame be to be perfected by a Melius inquirendum, or another Mandamus to be awarded, And reſolved by the chief Juſtices, Flemming, Coke and Tanfield, that though the ſaid Office was Quod tenementa prædicta tenentur, without ſaying tempore mortis, of the Anceſtor, tenebantur, yet the the ſame is ſufficient in Law in that point, and the rather, becauſe the preſidents are infinite thereof, But the ſaid Office is ſufficient in the point of relation to the Letters Patents, and ought not to binde and conclude the heir thereby, untill the defects therein ſhould be ſupplied by a Melius inquirendum, which defect was, becauſe in the finding of the tenure, there is added theſe words; videlicet, as it appeareth unto the Jurors by Letters Patents of King Ed. 6. dated 17 Auguſti, 2 Jacobi, by reaſon of which Relative words, the ſaid Judges did reſolve, that the ſame tenure is not expreſly and fully found by the Jury, but by way of reference to a Record, which is not ſufficent, whereupon a Decree was had accordingly.

Paſch. 9 Jacobi Regis.

Stills Caſe.

THe Jury found upon a Diem clauſit Extremum, after the death of Jane Still, That Thomas and John Horner (die mortis Jane) were ſeiſed in their Demeſne, as in Fee of the Manor of Moreton, as by Deed of bargain and ſale, made between Thomas Harris Knight, and Edward Harris his ſon of the one part, and the ſaid Thomas and John Horner of the other part, dated 30 Junii, primo Jacobi, and by a Fine between the aforeſaid Thomas and John Horner of the other part made, appeareth, They found that ſic inde ſeſitus, Thomas and John Horner, by Indenture, the 15 of October, primo Jacobi, made between the ſaid Thomas and John Horner of the one part, and the ſaid Jane of the other part, reciting, That whereas Tho. Harris Knight, and Edw. Harris, by their Indenture, by appointment of the ſaid Jane, upon ſecret confidence repoſed by the ſaid Jane, in Thomas and John Horner, granted the ſaid Manor to the ſaid Thomas and John Horner, and their heirs, And further, In dicta Indentura ulterius mentionatur, reciting, That the ſaid Jane paid 150 l. And that the true meaning of all the parties, dictæ Indenturæ, ultimo mentionatæ, was always, That notwithſtanding any conſideration or uſe in dicta Indentura, or in the Writings to the contrary expreſſed, That the ſame Manor ſhould continue to ſuch uſes as were mentioned in dicta Indentura ultimo mentionata, & ad nullum alium uſum, & per dictam Indenturam ultimo mentionatam, The ſaid Thomas and John Horner, covenanted with the ſaid Jane, to ſtand ſeiſed of the ſaid Manor, to the uſe of the ſaid Jane in tail, and after to ſuch uſes as the ſaid Jane ſhould nominate, Et per dictam Indenturam

denturam oltimo mentionatam apparet, & prædicti juratores dicunt quod prædicta Jana, de tali ſtatu prout Lex poſtulat, poſtea 30 Septembris, 6 Jacobi obiit ſic inde ſeſitus, prout Lex poſtulat, & quod dicta Jana fuit ſoror dicti Thomæ Horner, ex parte patris, And finde the tenure of a common perſon, And the ſaid Thomas Still her ſon and heir, and of the age of twelve years.

Queſtion. Firſt, for that they finde Thomas and John Horner, die mortis, ſeiſed as aforeſaid:

Secondly, for that they finde that Jane, de tali ſtatu ſuo, ſic inde ſeſita obiit, as aforeſaid; whereupon it was reſolved by the Lords chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, that the ſaid firſt part of the Office was inſufficient in the Law, for that there was no ſeiſin found in the ſaid Office, in the ſaid Jane, before the ſaid words (ſic inde ſeſita) As alſo, for that they found the ſaid Thomas and John Horner ſeiſed die mortis Janæ, as abovеſaid, So that there is not by the ſaid Office, any ſufficient ſeiſin found in the ſaid Jane, beſides divers other contraries, and imperfections in the ſaid Office, whereupon a Decree was had accordingly.

Trin. 9 Jacobi Regis.

Dakins Caſe.

IT was found by Office, That Hillary Dakins, the day of his death, was ſeiſed in his Demeſne as of Fee, of, and in the Manor of great Hatfield, in the County of York, and of 28 Organgs of land, with the appurtenances in Hatfield aforeſaid, and of, and in one Meſſuage, or Tenement, and 100 acres of land, arable, meadow, and paſture, lying within the Manor of Hatfield aforeſaid, and being ſo thereof ſeiſed, died ſo thereof ſeiſed, And whereas alſo further, it is found by the ſaid inquiſition, how that the ſaid lands were ſeverally holden, what day the ſaid Hillary Dakins died, and who is his next heir, and of what age, and who took the profits of the Premiſſes.

Queſtion. Whether the ſaid Office found by vertue of a Commiſſion, not ſhewing in the nature of what Writ, nor finding that the ſaid Commiſſion is annexed to the ſaid Office; It was reſolved by the Lords chief Juſtices, Flemming, Coke, and Tanfield, that this ſaid Office was void, whereupon a Decree was had accordingly.

Trin. 9 Jacobi Regis.

Lord Winſors Caſe.

HEnry, Lord Winſor, being ſeiſed in his Demeſne as of Fee, of ſundry Manors, Lands, Tenements, and Hereditaments in the County of Suffolk, Northampton, Buckingham, Darbiſhire, Glocester, Worceſter, Warwickſhire, Stafford, and Middleſex, did condey two parts thereof by admittance, To the uſe of Thomas, now Lord Winſor, within the Statut, &c. By Indenture, dated 4 Decembris, 32 Eliz. and leaveth a full third part by admittance to deſcend, and died ſo ſeiſed, 6 Aprilis, 3 Jacobi; an Office after his death onely found in Suffolk,

for

for the Mannors and Lands in that County. In which Office, the Will mentioning the ſaid Conveyance, is likewiſe found. The Mannors and Lands in the other Counties, are certified by the ſpeciall Surveys of the Feodaries of every ſeverall County, according to the uſuall courſe; The Lord Winſors whole eſtate thus appearing, the Auditors divided the ſame into three equall parts, and by conſent of one of the Executors and Truſtees of the Lord Winſor, The Mannor of Minchinghampton, with the Advoſon appendant, is, amongſt other things, contained in the ſaid Conveyance ſet forth to the King, for part of his Highneſſe third part, and by him demiſed under the Seal of his Court to the Right Honourable, the Earl of Northampton, one other of the ſaid Lord Winſors Executors and Truſtees, during the minority, reſerving all Preſentations, &c. for a Fine and Rent, which is by the Kings ſaid Farmer, ever ſince the death of the ſaid Lord Winſor enjoyed accordingly, The Church of Minchinghampton ſince Eaſter laſt is become void, The Lord Winſor preſenteth, and his Clerk, preſented, inſtituted, and inducted; Now the King preſently, and by his Attorney, informeth againſt the Ward and his Clerk, by him preſented, and ſome of the Executors of the ſaid Lord Winſor, who anſwer, that they think and hope to prove, That the ſaid Mannor and Advowſon of Minchinghampton, was conveyd to the ſaid Lord Winſor, as before, and that they think, and hope to prove, that there was a third part of other lands deſcended, whereof this land found in the Office in Suffolk was part, and the Mannor of Minchinghampton was no part; and therefore the Mannor of Minchinghampton was unduly ſet forth to the King, and conſequently the Leaſe thereof made to the Earl of Northampton void, Whereupon it was reſolved by the Lords, chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, That where the Anceſtor maketh a Conveyance within the Statute, of all his lands lying in divers Counties, and appointeth no third part, That though the Office be found onely in one County, and the reſidue come in onely by certificate, yet if the Auditors take a third part thereof for the King, and a Leaſe thereof be made, That is, a good Leaſe thereof by Law, ſince the Statute of Wills, 30 H. 8. Although there be no Office found thereof, and that the courſe taken by Surveys in this Court, without finding ſeverall Offices, is for ſuch purpoſe warrantable by Law, ſince the ſaid Statute, And they further reſolved, That if the Anceſtor did die, and ſuffer the whole land to deſcend, That then, upon like certificate and Office in one County, the Kings Officers in this Court may take the whole, and a Leaſe may be made thereof, which Leaſe is in like ſort good, But as the caſe is propounded, they did not reſolve upon any certain opinion therein, but onely they declared, that the diviſion, election, and Leaſe cannot be avoided by Plea, or meer ſurmiſe; but the ſame ought to be ſet forth to the Court by Bill, to be exhibited, expreſſing the Eſtate thereof; And as touching the ſuperinſtitutions, they reſolved, that they were againſt the Law, and that a Prohibition did lie, if any ſuch were made, And that the Kings Majeſty was put to his Quare impedit in this caſe, and was not otherwiſe to get any poſſeſſion, inſtitution, or induction for himſelf or his Majeſties Clerk; whereupon a Decree was had accordingly, and the ſaid points reſolved to be a direction in all other caſes of a like nature.

Trinit.

Trinit. 9 Jacobi Regis.

Sewſters Caſe.

Giles Sewſter, being ſeiſed in fee of the Mannor of Steeple-Marden in the County of Cambridg, holden by Knights-ſervice in chief, by Feoffment dated 5 Novemb. 25 Eliz. did enfeoff Richard Turner and Thomas Fitch, and their Heirs, of the ſaid Mannors, to the uſe of the ſaid Giles and Ann his Wife, and the Heirs males of the body of the ſaid Ann to be begotten by the ſaid Giles, and for default of ſuch iſſue, to the Heirs of the body of the ſaid Giles: The ſaid Giles Sewſter, termino Michaelis, 26 Eliz. doth levy a Fine of the ſaid Mannor to Thomas Whitney and his Heirs, with warranty againſt him and his Heirs, to the uſe of the ſaid Giles, and the Heirs males of his body, and for default of ſuch Heirs, then to the uſe of the Earl of Suffolk and his Heirs: A Writ of Mandamus went out to finde an Office after the death of Ann Sewſter onely, and to enquire of what Lands ſhe dyed ſeiſed, and of what Eſtate, and who was his next Heir? The Office found 5 Octob. 3 Jacobi, by vertue of the ſaid Writ of Mandamus, findeth the ſaid Conveyances and Eſtates, and that by vertue thereof the ſaid Giles was ſeiſed pront lex poſtulat, the Remainder in fee to the Earl of Suffolk: That Ann dyed 2 Novemb. 42 Eliz. That Giles dyed 5 Octob. 3 Jacob. Samuel Son and Heir of the ſaid Giles then and yet being within age.

Queſtion's firſt, Whether the King be ſufficiently entituled to the body and Lands of the ſaid Samuel Sewſter by this Office found after the death of his Mother, without finding another Office after the death of the Husband? And whether the Ward, being Heir of the body of the ſaid Ann begotten by the ſaid Giles, be barred by the warranty contained in the ſaid Fine? and whether, upon the commiſſion to finde an Office after the death of Ann, and of what Lands ſhe was ſeiſed, or dyed ſeiſed, the Office which findeth not the Eſtate ſeiſed, nor dying ſeiſed at all of Ann, be ſufficient or not? Whereupon it was reſolved by the Lords Judges Aſſiſtants to this Court, That the ſaid Office, found after the death of his Mother, is ſufficient to entitle his Majeſty, without finding any other Office, after the death of the ſaid Giles: But that the finding him to be dead in the ſaid Office, as it is indeed, is ſufficient to give the Court notice thereof: And that the ſaid Warranty can no ways binde the Right of the ſaid Ward unto the ſaid Eſtate-tayl, to him deſcended by and from the ſaid Mother: and that after the death of his Father, the Ward is remitted to his ſaid Eſtate, to him ſo deſcended: And laſtly, that the truth of the ſaid Eſtate being ſo eſpecially found, the Office ſhewing the manner of their ſeiſin pro ut by the Statute, is ſufficient: whereupon a Decree was had accordingly.

Trinit. 9 Jacobi Regis.

Shallocks Caſe.

A Writ of Mandamus was awarded the 11 Auguſti, 5 Jacobi Regis: videlicet, Jacobus, &c. Eſcheatori ſuo in comitatu Lincoln. ſalutem,

tem, præcipimus tibi, &c. diligenter inquiras quantum terræ & Tenementa Anthonii Shallock, *Armigeri*, defuncti, tenuit de nobis in capite, tam in dominico ſuo, quam in ſervitio in eadem baliva ſua, die quo obiit, & quantum de aliis, &c. & quo die idem Anthonius obiit, &c. Teſte ut ſupra. Afterwards, by inquiſition taken upon the ſaid Writ in September following before the Eſcheator, the Jury found, quod prædictus Anthonius Shallock in dicto brevi nominatus, die quo obiit fuit ſeſitus in dominico ſuo ut de feodo, de & in decem acris paſturæ cum pertinentiis in Freeſtone in comitatu Lincoln, cum pertinentiis, ac de, &c. & prædictus Anthonius Shallock ſic de præmiſſis ſeſitus exiſtens 23 Aprilis, 32 Eliz. de tali ſtatu obiit ſic inde ſeſitus, & ulterius, &c. dicunt quod prædictæ decem Acræ paſturæ cum pertinentiis in Freeſtone prædicta in dicto comitatu tempore mortis dicti Anthonii Shallock, tenebantur de dicta domina Elizabetha nuper Regina Angliæ in capite per ſervitium militare, & modo tenentur de dicto domino Rege per idem ſervitium.

Queſtion. Whether the Office thus found be void or not? whereupon it was reſolved by the Lords chief Juſtices and chief Baron, Flemming, Coke, and Tanfield, That the Office was well found, and that the Writ was good; and that this caſe did differ from Slaughters caſe, 8 Coke, fol. 168.

Michaelm. 9 Jacobi Regis.

Ewens Caſe.

MAtthew Ewens, one of the Barons of the Exchequer, and Frances his Wife, ſeiſed to them and to the Heirs of the body of the ſaid Matthew of the Rectory Impropriate of Charlton Cunvil in the County of Somerſet, and of the Mannors of North-Cadbury and Maperton in the County of Somerſet, which Mannors he had lately purchaſed of Sir Francis Haſtings, By his laſt Will and Teſtament in writing did deviſe the ſaid Rectory and two parts of the ſaid Mannors to A. B. C. D. and E. F. and their Heirs, until of the profits thereof, and of other Lands which he had formerly bargained and ſold unto them, they had payd all his Debts and Legacies; and after all his Debts and Legacies payd, then unto his Brother Alexander Ewens and his Heirs: Matthew dyed, the ſaid Alexander Ewens being his Heir, theſe Mannors holden in capite, Alexander Ewens hath undertake the payment of the reſt of the Debts and Legacies unpayd, and then the ſaid Alexander Ewens, A. B. C. D. and E. F. the Deviſees, by Indenture joyn; and the ſaid Feoffees, at the requeſt of the ſaid Alexander Ewens, and by his appointment, and in diſcharge of the truſt in them repoſed, and for and toward the payment of the Debts and Legacies unpayd, and in conſideration of a marriage to be had and ſolemnized between Matthew Ewens Son of the ſaid Alexander, and Katherin Haſtings Daughter of Sir Edward Haſtings Knight, did enfeoff Sir Francis Haſtings, Sir William Courtney and others, of their two parts of the Reverſion of the ſaid Mannors, and of the ſaid whole Rectory of Charlton Cunvil: And the ſaid Alexander Ewens, for the conſideration aforeſaid, did by the ſame Indenture enfeoff the ſame Feoffees of the third part to the uſes following; videlicet, of the Mannor of North-Cadbury and South-Cadbury, and the capital Meſſuage and Demeins there, to the uſe of the ſaid Alexander for life, without impeachment of Waſte, and a power

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to Leaſe the Tenements, and after his decease to the uſe of Matthew Ewens his Son, and after his decease to the uſe of the ſaid Katherin Haſtings for life, and for her Joynture; and after her decease to the uſe of the Heirs males of the body of the ſaid Matthew Ewens, and then to the right Heirs of the ſaid Matthew Ewens: And of the Mannor of Maperton, and Rectory of Charlton Cunvil, to the uſe of the ſaid Alexander Ewens and Gertrude his Wife, and the Heirs of the ſaid Alexander for ever: Frances, the Wife of Baron Ewens, at Whitſontide, 7 Jacobi Regis, dyed; all the Debts of the Baron were not yet payd.

Queſtion. For how much the ſaid Alexander Ewens ought to ſue Livery in poſſeſſion? Secondly, if he ought to ſue Livery of any of the Lands in Reverſion or Remainder? Whereupon it was reſolved by the Lords chief Juſtices and chief Baron, Flemming, Coke, and Tanfield, That Livery ought to be ſued onely for a third part of the Lands in poſſeſſion.

Michaelm. 9 Jacobi Regis.

Audleys Caſe.

By an Inquiſition taken 28 Junii 42 Eliz. by a Mandamus after the death of Thomas Audley, Father of Ann Audley the Ward, it was found, that long before the death of the ſaid Thomas Audley, Thomas his Father being ſeiſed in fee of the Mannor of Gosbekis, 1 Aprilis, 2 and 3 Phil. and Mary, did make a Feoffment to the uſe of himſelf and Beatrice his Wife, and of the Heirs of their two bodies begotten, the Remainder to the right Heirs of Thomas Audley the Grandfather: By vertue whereof, Thomas Audley the Grandfather and Beatrice his Wife were ſeiſed in tayl; and ſo ſeiſed the ſaid Thomas Audley the Grandfather of ſuch Eſtate died ſeiſed, having iſſue by the ſaid Beatrice the ſaid Thomas Audley the Father, and that Beatrice did ſurvive, and that Thomas his Son did dye, and that Ann his Daughter and Heir was born after his death, and that the ſaid Mannor was holden in capite: The Plaintiffs, Francis Audley, one of the Sons of the ſaid Thomas, and Richard Haſſet, and Elizabeth his Wife, one of the Daughters of the ſaid Thomas, being Thomas Audleys ſurviving children, do exhibit their Will, and thereby ſet forth, That Thomas Audley the Grandfather and Beatrice his Wife were ſeiſed in tayl, and 5 Eliz. ſuffered a Recovery to the uſe of the ſaid Thomas and Beatrice, and the Heirs of the ſaid Thomas for ever: and that after the ſaid Thomas made his Will in writing, and thereby did demiſe the ſaid Mannor to Thomas the Son, and his Heirs for ever, upon condition that he ſhould pay to all his Brothers and Siſters living 30 l. apiece, to be payd by 3 l. per annum to every one of them, within ten years after the death of Beatrice his Wife: And if any of his Children ſhould dye, their portion to ſurvive to the reſt; and that if default of payment ſhould be made, that then it ſhould be lawful to all or any his Children to enter into the ſame Meſſuage and Lands, or any part thereof: Beatrice died 9 Junii, 1608. the Plaintiffs prayed allowance, &c.

Queſtion is, Whether the Office remaining in force, this Will praying no Traverſe, is to be anſwered or no? And whether the Plaintiffs

ſhall

ſhall be relieved by the Statute of 2 Ed. 6. chap. 8. the Office remaining in force not traverſed or avoyded? Whereupon it was reſolved by the Lords chief Juſtices and chief Baron, Flemming, Coke, and Tanfield, That the 30 l. apiece, payable by 3 l. per annum, is no Rent, but a ſum in groſs; and that the Brothers and Siſters in this caſe cannot traverſe the Office, nor have allowance by the Statute: but the ſaid Judges wiſhed, that the Court would relieve them in Equity.

Paſch. 9 Jacobi Regis.

Shallocks Caſe.

UPon a Diem clauſit extremum awarded, it is found by Office, 26 Septemb. 32 Eliz. after the death of Anthony Shallock, Quod prædictus Anthonius Shallock in prædicto brevi nominatus fuit ſeſitus in dominico ſuo ut in feodo de & in tribus Meſſuagiis, &c. & ſic de omnibus, &c. ſeſitus exiſtens de eiſdem omnibus ſuam declaravit ultimam voluntatem in ſcripto, cujus datum eſt 20 Aprilis, ultimo præterito, prout ſequitur in hæc verba, *Item*, I give, &c. And after the Jury found ſeveral Tenures in Socage of common perſons, and no Lands holden of the King; then the Jury finde further, Et inſuper dicunt Juratores prædicti ſuper ſacramentum ſuum, quod prædictus Anthonius Shallock in prædicto brevi nominatus obiit circa 23 diem Aprilis ultimo præteritam: and that Thomas Shallock is his Son and next Heir, and finde all the other points of the Writ certainly: afterwards 5 Jacobi, a Writ of Mandamus is awarded after the death of the ſaid Anthony, whereby part of the ſaid Lands are found to be held, at the time of the death of the ſaid Anthony Shallock, of the late Queen Elizabeth in capite by Knights-ſervice, and at the time of the taking of the ſaid laſt Inquiſition were holden of the Kings Majeſty in chief by Knights-ſervice, and an Ignoramus found of the reſt.

Queſtion. Whether the firſt Office be meerly voyd, or but voydable, no dying ſeiſed being found? Secondly, admitting the ſaid Office to be voyd in Law, whether the Mandamus were well awarded, before the firſt Office was avoyded, by matter of Record? Whereupon it was reſolved by the Lords chief Juſtices and chief Baron, Flemming, Coke, and Tanfield, That the Office finding no dying ſeiſed, and onely tenure of common perſons, was meerly voyd: But they ſaid, If any Tenure in capite, or by Knights-ſervice, had been found of the King, and no dying ſeiſed, yet the Office had not been voyd, but voydable: And that a Melius inquirendum ſhould have been awarded, to enquire better of the Eſtate whereof he was ſeiſed, and whether he dyed ſeiſed or no? for which they cited H. 27 Eliz. Mounſons Caſe, and Trinity, 18 Eliz. Bruertons Caſe, and the Regiſter 293. and 3 H. 6. 8. by Martin: but otherwiſe it is where no Tenure is found of the King: wherefore they held the firſt Office voyd, and the ſecond Mandamus well awarded, and the ſecond Office good.

Hillary

Hillar. 8 Jacobi.

Dracots Caſe.

IT is found by Office at Darby, in the County of Darby, 7 Septembris, 28 Eliz. by Mandamus, after the death of Richard Dracott, nuper de Leſtowe, That he, die quo obiit, was ſeiſed in his Demeſne as of Fee, de & in uno capitali Meſſuagio cum pertinentiis in Leſtowe prædicta, ac de & in tribus bovatis & dimidio, terræ, prati & paſturæ, cum pertinentiis in Leſtowe prædicta, ac etiam de & in uno alio Meſſuagio, & uno bovato terræ prati, & paſturæ in Cadnor in Comitatu prædicto, And findes his dying ſeiſed alſo of the other lands in ſundry other Villages and places in the ſame County by particular names; And then it is found, that the ſame capitall Meſſuage, and three bovates of land, & cætera præmiſſa in Leſtowe prædicta tenentur, &c. de Johanne Zouch Milite, ut de caſtro ſuo de Cadnor, in Comitatu prædicto, per ſervitium Militare; videlicet, per homagium, &c. Et ad faciendum ſectam ad Curiam prædicti Johannis Zouch, Manerii, ſive Domini ſui de Cadnor prædicta, de tribus, &c. Et quod prædictum Meſſuagium, & unum bovatum terræ prati & paſturæ cum pertinentiis in Cadnor prædicta tenentur de dicto Johanne Zouch, ut de caſtro ſuo de Cadnor prædicta per ſervitium Militare; videlicet, &c. And tenures alſo of all other the parcels are found to be of common perſons, and other points of the Writ are found, 5 Jacobi, A Commiſſion in the nature of a Melius inquirendum iſſued, reciting thus: That where it is found, by the former inquiſition; Quod prædictus Richardus obiit ſeſitus de & in uno Meſſuagio, & uno bovato terræ, prati, & paſturæ, cum pertinentiis in Cadnor, in Comitatu prædicto, &c. Et quia jam accepimus, &c. Nos igitur volentes, &c. plenius certiorari, utrum præmiſſa prædicta cum pertinentiis in Cadnor prædicta tempore mortis prædicti Richardi, tenebantur de prædicta nuper Regina Eliz. Et adhuc tenentur de nobis per ſervitium Militare necne, & qualiter & quando, & ideo vobis mandamus, &c. ſuper præmiſſas facias inquiſitionem, By vertue whereof it was after found by an Office, 18 Sept. 5 Jacobi, in this manner: viz. Inquiſitio capta, &c. Virtus Commiſſionis, &c. in natura brevis de melius inquirendum eiſdem, &c. directum, &c. & huic, &c. ad inquirendum poſt mortem Richardi Draycot, per Jurat. &c. Qui dicunt quod quædam pecia terræ in Cadnor prædicta, vocata The Oulders, exiſtentis parcella terræ & tenementorum de quibus prædictus Richardus Draycot in Comitatu prædicto nominatus, ſeſitus, ſpecificatus in quadam inquiſitione capta, &c. 7 Septemb. 15 Eliz. (which is the ſaid firſt inquiſition) tempore mortis prædicti Richardi tenebantur de dicta Domina Regina in Capite, per ſervitium Militare, & quod unum particulare clauſum in Cadnor prædicta jacet ad finem boſci vocati Egrew exiſtentis etiam parcella terrarum & tenementorum in dicta inquiſitione ſpecificata, de quibus prædictus Richardus Draycot obiit ſeſitus, tenebantur tempore mortis prædicti, &c. And thereof alſo finde a tenure in Knights-ſervice in Capite. Et quod unum clauſum in Cadnor prædicta, continens unam acram jacentem juxta venellum jacentem in Loſcowe prædicta uſque in villam de Heverer in Comitatu prædicto exiſtentem, etiam parcellam terrarum & tenementorum de quibus prædictus Richardus obiit ſeſitus in dicta inquiſitione ſpecificatis tenebantur, &c. and findes a tenure thereof alſo by Knights-ſervice.

Queſtion. In the laſt inquiſition, and being found, Quod quædam pecia terræ in Cadnor prædicta, whereas Cadnor was not mentioned before in that inquiſition:

Firſt, whether the Office be not inſufficient and void, as to that parcell?

Secondly, whether it be not alſo inſufficient and void for the other parcells, theſe being alſo found to lie in Cadnor prædicta? The lands in the firſt inquiſition being named by other names then they are in the Commiſſion of Melius inquirendum, whereupon the inquiſition is taken?

Thirdly, whether it doth appear by any thing in the ſaid inquiſition, that the ſame are any parcels of the lands named in the Commiſſion, and if it do not, then whether the whole Office be not void by it to all reſpects? whereupon it was reſolved by the Lords chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, that the ſaid Office is good, notwithſtanding any thing appearing in the ſaid caſe.

Michael. 9 Jacobi Regis.

Earl and Counteſſe of Dorſets Caſe.

IT is found by Office, after the death of Robert, Earl of Dorſet in Suſſex, by Commiſſion in the nature of a Diem clauſit extremum, That the ſaid Earl died ſeiſed in Fee, of, and in divers Mannors, Lands, and Tenements in Suſſex, and other Counties holden by Knights-ſervice in Capite, And that Anne, now Counteſſe of Dorſet was his wife, and Richard Earl of Dorſet, was his ſon and heir, and within the age of 21 years, who hath not yet ſued his Livery, The ſaid Counteſſe hath taken her oath in Chancery, not to marry without his Majeſties licenſe, and prayeth an order further of this Court, to ſue forth of the Chancery a Writ de dote aſſignanda.

Queſtion is, Whether the Writ de Dote aſſignada, being to be directed out of the Chancery, to the Eſcheator of each County, there is no ground for the going forth of the ſaid Writ, untill an Office be found in every County, and if in Chancery a Writ de dote aſſignanda be not to be awarded, till Office found in every County, then there will be no cauſe for the Court of Wards to grant warrant for ſuch Writ:

Secondly, for that there is a preſident in this Court of the like demaund, It is deſired to be reſolved, whether the ſaid Anne, Counteſſe of Dorſet, ought to have a Warrant from this Court for a Writ de Dote aſſignanda, without compounding firſt in this Court for her fine for her marriage, or for her licenſe to marry, whereupon it was reſolved by the chief Juſtices, and chief Baron, Flemming, Coke and Tanfield, That ſhe is to have her Dower in Suſſex, where the Office is found, And as to the ſecond, that Dower is to be aſſigned without compounding for her marriage: See Michaelmas 35 and 36 Eliz. the caſe of Skrimſield and his wife, againſt Vicount Byndon.

Mich.

Mich. 9 Jcobi Regis.

Brands Caſe.

JOhn Brand, being ſeiſed in Fee of the Manor of Edwardſtone, in the County of Suffolk by Indenture, primo Novembris, 45 Eliz. did covenant with Thomas Walton and William Cordwall That before the laſt day of Michaelmas Term then next following, he would levie a Fine of the ſaid Manor, inter alia, to the ſaid Thomas Walton, and William Cordwall, and to their heirs, And that the ſaid Fine ſhould be to the only uſe of the ſaid John Brand, during his life, without impeachment of waſte, and after his deceaſe, to the uſe of ſuch perſon or perſons, of ſuch part or parcell of the Premiſſes for life or lives, with ſuch remainders over to ſuch perſon or perſons, and to the heirs of their body or bodies, and their heirs, as ſhould be by the ſaid John Brand, by his laſt Will particularly named and declared, and to the uſe of ſuch other perſon and perſons, and their heirs, of ſuch other part or parcell of the Premiſſes, as the ſaid John Brand ſhould likewiſe, by his laſt Will and Teſtament appoint and declare; And upon condition and limitation therein expreſſed, &c. And accordingly the ſaid Fine was levied before the end of the ſaid Term; and the ſaid John Brand 24 Septemb. 4 Jacobi, did covenant with Robert Cotles, and Elizabeth his daughter, in conſideration of a marriage to be had between Benjamin Brand, ſon of the ſaid John, and the ſaid Elizabeth; And for the love and affection he did bear to his ſaid ſon, That the ſaid John Brand, his heirs and aſſignes, ſhould ſtand ſeiſed of the ſaid Manor of Edwardſtone, to the uſe of the ſaid Benjamin and his heirs for ever; Benjamin preſently after, married the ſaid Elizabeth; And 6 of May laſt, the ſaid John Brand died, and the ſaid John Brand, now his Majeſties Ward, being the heir, at the common Law, videlicet, the ſon of Richard Brand deceaſed, ſon and heir of the ſaid John Brand deceaſed.

Queſtion. Whether the ſaid John Brand had power by his ſaid Indenture, in 4 Jacobi and Premiſſes, to ſtand ſeiſed of the ſaid Manor, to the uſe of the ſaid Benjamin Brand and his heirs, contrary to the uſe of the former Fine, And in whom the Eſtate and Right of the ſaid Manor reſteth, whereupon it was reſolved by the Lords chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, that the Inheritance and Fee was in John Brand, and that he had power by the ſaid Indenture, to ſtand ſeiſed to the uſe of Benjamin and his heirs; And that the Eſtate and Right of the Manor doth go according to the Indenture of Covenants.

9 Jacobi Regis.

Brands Caſe.

THis agreeth with the former Caſe for the Manor of Edwardſtone, for ſo much as concerneth the firſt Indenture, made in 45 Eliz. and the Fine acknowledged in performence of the Covenants therein contained; But afterwards this caſe differeth from the former: for after the Fine ſo acknowledged of this Manor John Brand 5 Jacobi, did enſeoff

feoffe one Matthew Smith, and Henry Seeks, and their heirs, of the ſaid Manno, and all other the ſaid lands, to the uſe of himſelf for life, without impeachment of waſte, the remainder, after his deceaſe, of the ſaid Manno of Powlſtead, and part of the Premiſſes, to Jacob Brand, in Fee, the remainder of the ſaid Premiſſes, by ſeverall parcels, to Samuel and James Brand in Fee; And afterwards, the 6 of May laſt, the ſaid John Brand dieth, the ſaid John Brand now his Majeſties Ward, being his heir as above.

Queſtion. Whether the ſaid John Brand had power to convey the ſaid Manno and lands by the ſaid Feoffment, to the uſes therein expreſſed, contrary to the uſe of the former Fine, and in whom the Eſtate and Right of the ſaid Manno and lands remain; whereupon it was reſolved by the Lords chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, That the ſaid Inheritance in Fee, was in John Brand, and that he had power to ſtand ſeiſed to the uſe of Benjamin and his heirs, and that the Eſtate and Right of the Manno doth go according to the Feoffment, and uſes thereupon.

Mich. 10 Jacobi Regis.

Gawbers Caſe.

IT was found by an Office in Southwark, 3 Jacobi, by vertue of a Diem clauſit extremum, awarded after the death of John Gawber, that Edward Rigby, Thomas Ireland, and Michael Doughty, were ſeiſed in Fee of the Manno of Rigate, and of divers Meſſuages, Lands, Tenements, and Hereditaments, and of 10 l. Rent in Rigate aforeſaid, ſometimes the Inheritance of the Earl of Darby, That they being ſo ſeiſed, in conſideration of 700 l. being the money of Thomas late Earl of Dorſet, and to them paid by the ſaid Gawber, at the requeſt and appointment of the ſaid Earl, 28 Maii 42 Eliz. did bargain and ſell the ſaid Manno to the ſaid John Gawber, and his heirs; They ſaid moreover, that no peny of the ſaid money was paid by Gawber, but all by the Earl, and that the Lands were aſſured to Gawber upon truſt and confidence in him repoſed by the ſaid Earl, to the intent that the ſaid Earl and his heirs ſhould take the profits thereof, And that Gawber and his heirs, ſhould aſſure the Premiſſes to the Earl and his heirs at all times upon requeſt; And that ſuch iſſues and profits as Gawber and his heirs ſhould receive, ſhould be to the Earls uſe: It is laſtly found, That Gawber died ſeiſed of theſe lands, and that Margaret, his daughter and heir was 9 years of age, and that the lands were holden of his Majeſtie by Knights-ſervice in chief, And that he died ſeiſed of no other lands.

Queſtion. Whether the heir of Gawber ought to be in Ward, and ſue Livery or not, And reſolved by the Lords chief Juſtices, and chief Baron, Flemming, Coke and Tanfield, That the heir of the ſaid Gawber, ought to be in Ward, and to ſue Livery, and that there is no remedy for it.

Mich.

Michaelm. 9 Jacobi Regis.

Bacons Case.

ANn Butts, widow, and William Barrough, Esquire, seised in fee in Copercenary of the Mannors of Acton and Wherstead and other Lands, levy a Fine thereof to A. and B. which Fine, concerning the said Mannors of Wherstead and other Lands, was to the use of the said William Barrough and his Heirs: And concerning the moyety of the said Mannor of Acton, and some other Lands, to the use of the said Ann Butts for her life, and after to the use of Sir Nicolas Bacon and Dame Ann his wife, Daughter of the said Ann Butts in tayl, the Remainder in fee to the said Dame Ann Bacon: And for the other moyety of the said Mannor of Acton, and of other Lands, to the use of the said Sir Nicolas Bacon and Dame Ann his wife in tayl, the Remainder in fee to the said Dame Ann Bacon: Ann Butts dyeth, Dame Ann Bacon her Daughter and Heir of full age; the said Mannors are holden in capite by Knights-service, and all this found by Office; Sir Nicolas Bacon and Dame Ann his wife are still living.

Question. Whether the Kings Majesty shall have Livery and primer seisin of a third part of the Mannor of Acton, or a third of the moyety thereof, or of any part thereof, and of the Lands therewith conveyed? Whereupon the Lords chief Justices and chief Baron, Flemming, Coke, and Tanfield, did resolve, That the said Sir Nicolas Bacon, and Dame Ann his wife, are to sue a Livery of a third part of that moyety of the said Mannor of Acton, and other Lands, which by the said Fine were conveyed by the said Ann Butts to the use of the said Sir Nicolas Bacon and Dame Ann his wife, to whom the Estate and use aforesaid is limited, & were Children to the said Ann Butts within the meaning of the Statute of Wills 32 and 34 H. 8. And as concerning the other moyety of the Mannor of Acton, and other Lands limited to the said uses by the said William Barrough, no Livery was to be sued by the said Sir Nicolas Bacon, and Dame Ann his wife, of that moyety, or any part thereof, for that, that their Estate therein is derived from the said William Barrough in the said Case named; whereupon a Decree was had accordingly.

9 Jacobi Regis.

Lewes Case.

BY vertue of a Commission in the nature of a Diem clausit extremum, an Inquisition was taken at Wrexham in the County of Denbigh, 6 Octob. 8 Jacobi, post mortem Rodorici Lewes, by which it was found, that the said Rodorick, long before his death, was seised in his Demesn as of fee, of and in divers Messuages, Lands, and Tenements, in the several Towns and Parishes of, &c. and thereof so seised, Robert Jones being his Cosin and next Heir within age: it is further found by the said Inquisition, That one Acre, parcel of the premisses

milles, at the time of the death of the ſaid Rodorick, was holden of his Highnes by Knights-ſervice in capite, and the reſt of common perſons in Socage, ſince the taking of the ſaid Inquiſition the Heir is dead.

Queſtion. Whether the ſaid Office may now be traverſed in the point of Tenures, or dying ſeiſed? Whereupon it was reſolved by the Lords chief Juſtices and chief Baron, Flemming, Coke, and Tanfield, That in the Caſe afore ſaid, the dying ſeiſed is traverſable by the party grieved: but the Tenure need not to be traverſed, becauſe the force of the Office by the death of the ſaid Robert Jones is determined, if no arrearages be of any Rates under age: And in another Inquiſition, the party is at liberty touching the Tenure, and not bound by the ſaid former Inquiſition: whereupon a Decree was had accordingly.

Michaelm. 9 Jacobi Regis.

Sir William Prices Caſe.

SImon Norwich, Eſquire, ſeiſed in fee of the Manor of Netherhall, and two hundred Acres of Land in the County of Northampton, conveyed the ſame to Bridget his Wife for life, and died ſeiſed of the Reverſion thereof, and of the Manor of Stacies, and other Lands, which deſcended to Sir Charls Norwich, Knight, his Son: Sir Charls conveyed the Manor of Stacies, and other Lands, to the uſe of Dame Ann his Wife for life, for Joynture; and after made a Leaſe of Netherhall, and the reſidue of the Lands in Joynture to Bridget, to Sir Lewis Watſon, Knight, and others, from the death of Bridget for forty years, if Dame Ann ſhould ſo long live, upon truſt and confidence to ſuffer Dame Ann, after Bridgets death, to take the profits to her uſe, Sir Charls Norwich his Son Simon then and yet within age, who by Tenure in Chivalry in capite is in Ward to his Majeſty: the Land in poſſeſſion deſcended not, being a full third part, a deduction was made out of Dame Anns firſt Joynture to ſupply the Kings third part of ſuch value as the whole was at the time of Sir Charls Norwiches death: the Kings Majeſty by Indenture under the Seal of this Court of Wards demiſed his third part unto Sir Lewis Watſon, Bridget afterwards dyeth.

Queſtion. Whether the King ſhould have any part of the ſaid Manor and Lands, which Bridget held in Joynture, to augment his third part ſet forth as aforeſaid? The Lords chief Juſtices and chief Baron, Flemming, Coke, and Tanfield, thereupon reſolved, That his Majeſty ought by the Law to have a full third part of the ſaid Manors, and other the demiſed premiſſes, during the minority of the ſaid Ward: And that his Majeſties third part, heretofore ſet forth of the reſidue of the Lands of the ſaid Wards Father, ought not to be now defeated or changed, but to remain in ſuch plight as the ſame formerly was: and the ſame third part of the ſaid Manor, and Leaſed premiſſes, to be now ſet forth as an augmentation and addition unto his Majeſties ſaid third part formerly ſet forth: according to which Reſolution a Decree was made accordingly.

Mich.

Mich. 9 Jacobi Regis.

Barbers Caſe.

IT is found by Office taken the 28 of May, 5 Jacobi, after the death of William Barber of M. in the County of D. virtute brevis de mandamus, quod prædictus Willihelmus Barber die obitus ſui fuit ſeſitus in dominico ſuo ut de feodo, de & in duobus Meſſuagiis ſive Tenementis in Maltave ſive Malcham prædictam cum 40 acris terræ prati & paſturæ in ſeparabilibus occupationibus Thomæ Barber & Radulphi Creſwell, cum omnibus & ſingulis præmiſſis prædictis, tenentur de domina Elizabetha nuper Regina Angliæ: ſed per quæ ſervitia Juratores ignorant, & quod aliud Meſſuagium terræ & tenementa in Malcum prædicta cum pertinentiis, in occupatione dicti Radulphi Creſwell tenentur de domino Rege, ut de honore ſuo de Tutbury in comitatu Staffordæ, parcella ducatus ſui de Lancaſter, per ſervitium militare, & tempore mortis prædicti Willihelmi Barber de domina Elizabetha nuper Regina Angliæ de honore ſuo de Tutbury in comitatu Staffordæ prædicto per ſervitium militare: By the ſaid Office Thomas Barber is found to be Son and next Heir to the ſaid William, and was within age at the time of the death of the ſaid William his Father.

Queſtion. Whether the Office for the incertainty be not voyd in the point of the dying ſeiſed and Tenure? Whereupon it was reſolved by the Lords chief Juſtices, Flemming, Coke, and Tanfield, That the ſaid firſt Office was meerly voyd, both in the dying ſeiſed, and Tenure by Knights-ſervice thereby found, for that it finds a dying ſeiſed of two Meſſuages or Tenements, which is altogether uncertain: and the forty Acres of Land, Meadow and Paſture, are not found by the ſaid Office to lie in any Parish, Town, or County; whereupon a Decree was had accordingly.

Michaelm. 9 Jacobi Regis.

Cleers Caſe.

IT is found by Office, by vertue of a Commiſſion in the nature of a Mandamus, after the death of Sir Edward Cleer, Knight, the ſaid Sir Edward being ſeiſed of divers Manors, Lands and Tenements in Fee-ſimple in Norfolk and Suffolk, by Indenture dated primo Junii 45 Eliz. in conſideration of 800 l. to him payd, being parcel of the Marriage-mony of Margaret the wife of Sir Edward Cleer his Son and Heir apparant, and in conſideration of maintenance and living to be had for the ſaid Margaret during her life, and for the better advancement of the Iſſues males of the ſaid Margaret, by the ſaid Edward the Son begotten, did convey unto Sir Nicolas Bacon and Sir John Townſend, Knights, and others, and their Heirs, during the life of the ſaid Dame Margaret Cleer, and after her deceaſe to the uſe of the ſaid Sir Edward Cleer the Father during his life, and after his deceaſe to the uſe of Henry Cleer Son of the ſaid Sir Edward the Son and Dame Margaret in tayl; which Conveyance to Sir Nicholas Bacon, Sir John Townſend, and others, during the life of the ſaid Dame Margaret, was

in

in truſt, and for the profit and benefit of the ſaid Dame Margaret, divers of the ſaid Lands, whereof the ſaid Sir Edward was ſeiſed as aforeſaid, were at his death and ſtill are holden of the Kings Majeſty by Knights-ſervice in capite: Sir Edward Cleer the Father dyeth, Sir Edward Cleer the Son being his next Heir of full age at the death of his ſaid Father. Dame Margaret is ſtill living.

Queſtion. Whether this Conveyance be an act executed within the Statute of Wills 32 and 34 H. 8? It is likewiſe found by the ſaid Office, That the ſaid Sir Edward Cleer the Father, by his Indenture bearing date the firſt of June, 43 Eliz. did convey one other part of the ſaid Mannors, Lands and Tenements to the ſaid Sir Nicolas Bacon and others, and their Heirs, to the uſe of him the ſaid Sir Edward for life, and after to the uſe of ſuch perſon as the ſaid Sir Edward Cleer the Father by his laſt Will ſhould appoint, during the minority of the ſaid Henry Cleer his Grandchilde, and after to the ſaid Henry Cleer in tayl, the Remainder to the Heirs males of the body of the ſaid Sir Edward Cleer the Son: After which the ſaid Sir Edward the Father, by his laſt Will and Teſtament in Writing, dated 4 Aprilis, 1605. did will, that the ſaid Lands and Tenements, which upon the ſaid Conveyance was to come to the ſaid Henry Cleer at his age of 21 years, ſhould with the profits of the ſame, during his minority, be taken and imployed by his Executors, the moyety to the good bringing up of the ſaid Henry Cleer his Grandchilde, and the other moyety, as need ſhould require, to the payment of his Debts, and the ſurplus to the Reparation of the Houſes that be upon the Demeſns, that ſhall come to the ſaid Henry at his age of 21 years: And the ſaid Sir Edward Cleer made Dame Agnes Cleer his Executrix, and dyed, the ſaid Henry yet within the age of 21 years; Dame Agnes and the ſaid Henry are ſtill living, divers of the Lands aforeſaid were at the death of the ſaid Sir Edward, and ſtill are, holden of the Kings Majeſty by Knights-ſervice in capite: Sir Edward Cleer the Son was and is next Heir, and of full age at the death of his ſaid Father.

1 Reſolut. Queſtion. Whether the Conveyance and Will be acts executed within the Statute of 32 and 34 H. 8? whereupon it was reſolved by the Lords chief Juſtices and chief Baron, Flemming, Coke, and Tanfield, That for the firſt of the ſaid Caſes, the ſaid Conveyance made to the ſaid Sir Nicolas Bacon and others, to the uſe of them and their Heirs during the life of the ſaid Margaret Cleer, for ſuch conſideration as in the firſt Caſe aforeſaid is mentioned, was an act executed within the ſaid Statute of Wills 32 and 34 H. 8. for that the ſaid Margaret, wife of the ſaid Sir Edward Cleer the Son and Heir of the ſaid Sir Edward Cleer deceaſed, is a Childe within the meaning of the ſaid Statute: and the Conveyance to others in truſt for her is all one, as if it had been to her ſelf to her own uſe.

And the ſaid Judges, as to the laſt of the ſaid Caſes, did alſe reſolve, that the ſaid Conveyance and Will, in the ſaid laſt of the ſaid Caſes mentioned, as concerning the ſaid moyety of the ſaid Mannors, Lands and Tenements in the ſaid laſt Caſe mentioned, whereof the profits were appointed to be taken by Agnes, the wife and Executrix of the ſaid Sir Edward Cleer deceaſed, and imployed to the good bringing up of Henry Cleer his Grandchilde, were no acts executed in the life-time of the ſaid Sir Edward Cleer deceaſed, within the Statute of Wills of 32 and 34 H. 8. for that the ſaid Henry Cleer the Grandchilde, in the life-time of his Father, was no Childe of the Grandfather within the meaning

meaning of the ſaid Statutes; But as concerning the other moity of the ſaid Mannors, Lands, and Tenements, in the ſaid laſt caſe mentioned, whereof the profits were limited to be taken and imployed as need requires, to the payment of his debts, and the ſurplus to the reparation of the houſes that be upon the Demeſnes, that ſhall come to the ſaid Henry Cleer, at his age of 21 years, The ſaid Judges did reſolve, that the ſaid Conveyances and Will, as touching the ſaid moity, of the ſaid Mannors, Lands and Tenements, were Acts, executed within the ſaid Statute; for that the ſaid Dame Agnes, wife of the ſaid Sir Edward Cleer, deceaſed, was to have the ſame, being a perſon within the ſaid Statute, And alſo for that the ſame was limited, as need required, to the payment of the debt of the ſaid Sir Edward Cleer deceaſed, wherenpon a Decree was had accordingly.

Hillar. 9 Jacobi Regis.

Stephens Caſe.

IT was found by Office, after the death of Richard Stephens Eſquire, That Richard Stephens was ſeiſed in his Demeſne as of Fee, of, and in the Lordſhips or Mannors of Eſtington and Alkerton, in the County of Glocester, late parcell of the Poſſeſſions of Edward, late Duke of Buckingham, of high Treaſon attainted, and of, and in the Advowſon of the Parish-church of Eſtington, in the County aforeſaid, to the ſaid Mannor of Eſtington appendant, and of, or in the Lordſhip or Mannor of Alkerton, alias Amy Court, in the ſaid County, with the appurtenances, late parcell of the Poſſeſſions of Robert Bradſtone Eſquire, and of, and in the Mannor of Horſeley in the ſaid County, with the appurtenantes, and of, and in divers Meſſnages, lands, tenements, tithes and hereditaments in Eſtingon, Alkerton, and Horſeley in the ſaid County of Glocester, being ſeverally indeed, uſe, and reputation, parcell of the ſaid Mannors, or to the ſaid Mannors belonging or appertaining, and with the ſaid Mannors deviſed and occupied; And that the ſaid Richard Stephens being ſo ſeiſed, died ſo ſeiſed, and that the abovesaid Nathaneel Stephens was his ſon, and next heir, and within age, and that part of thoſe lands are holden by Knights-ſervice in Capite.

Queſtion. Whether the King in the Right of the ſaid Nathaneel Stephens the Ward, were entituled to any tithes in the Parish of Horſeley? wherenpon it was reſolved by the Lords chief Juſtices, and chief Baron, Flemming, Coke and Tanfield, That the ſaid Office, as touching any tithes, was in part void, in regard the word Decimas was ſo generall and uncertain, and that Tythes cannot be parcell of a Mannor as this caſe ſtandeth; And therefore doth not entitle the Kings Majeſty to any tithes in the Parish of Horſeley, by reaſon whereof a Quæ plura may iſſue, but no Melius inquirendum, whereupon a Decree was had accordingly.

Hillar. 9 Jacobi Regis.

Lawrence Case.

IT is found by Inquiſition, taken in Kent, 8 Novembris, 7 Elizabeth, upon a Diem clauſit extremum, after the death of Henry Lawrence, Gentleman, That the ſaid Henry Lawrence was ſeiſed in Fee of a Lime-Hill, and of a full Rent of 5 s. 3 d. ob. and of 100 acres of land in Bridge, in the County of Kent, and being ſo ſeiſed, the 3 of Octob. 10 Mariæ, Inde feoffavit John Brook, and others, and their heirs, to the uſe of the Feoffees and their heirs, And that after the 3 Octob. prædicto Mariæ prædictæ, the ſaid Feoffees enfeoffed the ſaid Henry Lawrence, and Everild his wife, and the heirs of the ſaid Henry, And that the ſaid Henry and Everild ſo being ſeiſed, the ſaid Henry died in forma prædicta ſeiſed, And that the ſaid Everild him over-lived, and held her ſelf in, and was ſeiſed of the Premiſſes for the term of her life, It is further found by the ſaid inquiſition, that the ſame Premiſſes, at the time of the death of the ſaid Henry were held in chief by Knights-ſervice: And it is further found, that the ſaid Henry alſo was ſeiſed in his Demeſne as of Fee, and of, and in the Manor of Salton, and died thereof ſo ſeiſed, primo Septemb. 7 Eliz. and that the ſaid Manor of Salton, tempore mortis, of the ſaid Henry, was holden of the ſaid Queen Elizabeth, Ut de caſtro ſuo de Dover per ſervitium Militare, and that John Lawrence was ſon and heir of the ſaid Henry, and then of the age of 16 years, The ſaid John Lawrence came to his full age of 21 years in the 11 of Eliz. and then tendered his Livery, and was continued till the 4 of Febr. 14 Eliz. and then he ſued a ſpeciall Livery, wherein her Majeſty did pardon all Intruſions, Entries, &c. Prout in the ſpeciall Livery contained, And the ſaid Everild lived till the ſaid Henry ſued, (by admittance) after this in June, 8 of Eliz. An inquiſition was taken before the Eſcheator of Middleſex, by vertue of a Mandamus after the death of the ſaid Henry Lawrence, whereby it was found, that the ſaid Henry Lawrence, the day of his death, was ſeiſed in his Demeſne as of Fee, of, and in four Meſſuages within Temple-Bar, of the yearly Rent of 40 s. not found or mentioned in the ſaid former Inquiſition, and that they were holden, De quo, vel de quibus, vel per quæ ſervitia, Juratores ignorant. But the ſaid Lawrence, the 28 of Novemb. 13 Eliz. before the ſaid Livery was ſued, did convey the ſaid four Meſſuages to Anthony Udall in Fee, upon theſe Inquiſitions two charges are charged and impoſed upon the ſaid four Meſſuages, The one for mean rates in arrere, during the minority of the ſaid heir, The other, ſince he came to full age.

Queſtion. Firſt, whether any mean rates are due and payable, of, or for the four Meſſuages to the late Queen, or to the Kings Majeſtie that now is?

Secondly, whether the ſaid mean rates, and arrerages, ſo put in charge, be pardoned by the ſaid Livery, or by any Act of Parliament ſince that time made, whereupon it was reſolved by the Lords chief Juſtices, and cheif Baron, Flemming, Coke, and Tanfield, That the ſaid mean rates charged upon the tenants, and occupiers of the ſaid Premiſſes ſince the accompliſhment of the full age of the ſaid John Lawrence are expreſly pardoned and diſcharged by the ſpeciall Livery, and

and the pardon therein contained. And for that reaſon the Conveyance of the heir after his full age and before Livery ſued, was not materiall, which ſaid reſolution of the ſaid Judges aſſiſtants was decreed accordingly.

Trinit. 9 Jacobi Regis.

Fletchers Caſe.

GEorge Fletcher by his laſt Will and Teſtament in writting, gives and deviſes, all his Meſſuages, Lands, and Tenements, lying and being in Southwark in the County of Surrey and Lewſham, in the County of Kent, (unto Cicely for life, ſince dead) and after the death of Cicely, unto his daughters Alice, Anne, and Joan, And to the heirs males of their bodies lawfully begotten, and to be begotten, and for default of ſuch iſſue, to the heirs females of their bodies, Provided always, that if any of their ſaid children, or any of their ſeverall heirs of their ſeverall bodies iſſuing, ſhall at any time hereafter alien, ſell or diſcontinue any of the ſaid lands to her or them given, whereby the ſame may not continue, as by the true meaning of his Will is appointed, That then that perſon or perſons ſo offending for ſo much of the Premiſſes, as he or they ſhall offend in, ſhall for his offence from thence forth be excluded, And the ſame ſhall remain, and be to the next which ſhall be in tail, or remainder under the like condition; Provided nevertheleſſe, That any of the ſaid children or their heirs, to whom he had limited the ſaid Eſtate of Inheritance, may make Leaſes to any perſon or perſons in poſſeſſion for 21 years or under, or for three lives, reſerving the old accuſtomed rent, or more to be paid to the owners of the reverſion, or reverſions, and dies, Alice and Joan his daughters die, leaving iſſue male of their bodies.

Queſtion. Whether Anne ſhall hold all by ſurvivor during her life: whereupon it was reſolved by the chief Juſtices, and chief Baron, Flemming, Coke, and Tanfield, That the ſaid daughters are joyntenants for term of life, and that the ſurvivor ſhall have the whole, during her life, But touching the Inheritance, they are ſeverall tenants in tail, there is no implication to the contrary.

9 Jcobi Regis.

Blewits Caſe, a Lunatick.

RIchard Blewit Eſquire, being ſeiſed of the Manor of Holcombe Regis for life, within which are many Copyhold tenants, grantable by Copy of Court-rolls, for one life in poſſeſſion, and another in reverſion granteth the Stewardſhip thereof by Deed under his hand and ſeal, to William Sliman for life, with a Fee of 10s. for executing thereof, and afterwards becomes Lunatick, and non compos mentis, and ſo found by inquiſition, and thereupon committed to Edward Chicheſter, Eſquire, and others under the ſeal of this Court.

Queſtion. Whether the Steward with the conſent of the Committees, or the Committees themſelves by their Steward may grant Eſtates by Copy, according to the cuſtome of the ſaid Manor, whereupon it was reſolved by the Lord chief Juſtice Hobbart, and chief Baron Tanfield,

Tanfield, That the ſaid Committees cannot grant any Copihold Eſtate, for that they themſelves by Law have no Eſtate in the ſaid Mannor, nor are Lords thereof, for the time being, but did reſolve, That the ſaid Lunatick by his Steward, may grant Copihold Eſtates, of, and in the ſaid ſeverall Mannors reſpectively, according to the cuſtome of the ſame. whereupon it was decreed accordingly.

Nevertheleſſe, it is ordered, that the ſaid Steward ſhould grant none without the privity of the Committees, nor before the Court were acquainted therewith, and give warrant for the granting thereof, But note, this was in diſcretion, and the grant by the Steward good in Law; And this meerly by way of caution, for the benefit of the ſaid Lunatick, and juriſdiction of the Court.

Mich. 12 Jacobi Regis.

Sir Warham Saintlygers Caſe, upon Digges Office.

By Inquiſition taken at Sittingborn, in the County of Kent, 28 Mail, 17 Eliz. by a Commiſſion in nature of a Mandamus, after the death of Tho. Digge, It was found that the ſaid Thomas being ſeiſed in Fee (inter alia) of a parcell of Marſhland, called Stephal, in Newington in the ſame County, by his Will, dated 14 Junii, 35 H. 8. deviſed all his Lands from his right heir, to other perſons, and afterwards, 8 Septemb. 154. 2 Ed. 6. died ſeiſed of the Premiſſes, Et quod Præmiſſa tenentur, de dicta Domina Regina in Capite per ſervitium Militare; That Chriſtopher Digges was couſn, and next heir of Thomas, and of the age of 37 years at the time of the inquiſition; And that Sir Warham Saintlyger Knight, received the profits of the ſaid parcell of land ever ſince the death of Thomas, upon all theſe matters, a charge is impoſed upon Sir Warham Saintlyger of a third part of theſe profits taken, during the minority of Chriſtopher, anno 5 Eliz. The Queen by Act of Parliament, pardoned all profits and ſumms of money, not after excepted in the ſame Act, which by any means ſhe might pardon, before, untill that time: In the ſame Act there is one exception in theſe words; Alſo except and forprized out of this generall and free pardon, All raviſhments and wrongfull taking and withholding of any of the Queens Wards, or Wards lands, at any time, come not grown to the Queens hands, and not yet diſcharged: Alſo except out of this pardon all manner of intruſions, had, made or done by any perſon or perſons, in, or upon any Mannors, Lands, Tenements or Hereditaments of our ſoveraign Lady the Queen, And the taking of any iſſues and profits of the ſame Lands or Tenements of our ſaid ſoveraign Lady; and alſo all ſuits and petitions for the ſame.

Queſtion. Whether Sir Warham Saintlyger is not to be diſcharged for the ſaid mean rates during the minority: whereupon It was reſolved by the Lord chief Juſtice Hubbart of the Common Pleas, and chief Baron Tanfield, that the taking the profits during the ſaid minority, could be no intruſion upon any Lands, within the one exception, becauſe there was no Office found for the King at that time, and ſo there could be no intruſion; Beſides, the lands therein mentioned, are the Inheritance of the Queen, and theſe in the exception could have been

but

but a Chattel in her: And for the other Exception, it appeared alſo to them, that there were no profits excepted therein, neither could the ſaid Lands of Thomas Digg deceaſed be ſaid to be Wards Lands in the Queens hands at the time of the Pardon, for that there was not ſeiſure made of them, nor Office was found at that time to entitle the Queen unto them: And ſo they reſolved clearly, That the ſaid profits taken during the minority are pardoned; and that the ſaid Sir Warham Saintlyger might not be charged for them: whereupon a Decree was had accordingly.

Hillar. 12 Jacobi Regis.

Jones Caſe.

IT is found by Office taken after the death of John Jones, Eſquire, in the County of Lincoln, 13 Septembris, 12 Jacobi, by Commiſſion in the nature of a Mandamus, That the ſaid John Jones die obitus ſui fuit ſeſitus in dominico ſuo ut de feodo, de & in Manerio, ſive dominico ſuo vocato Duſtus Manor, alias Duttons fee, cum pertinentiis in Barrow in dicto comitatu, ac de & in, &c. & quod prædictus Johannes Jones ſic de omnibus & ſingulis præmiſſis prædictis ſeſitus exiſtens; poſtea, ſcilicet decimo Maii, 42 Eliz. apud Barrow prædictam feoffavit quendam Willihelm. Welcomb armigerum, proximum conſanguinium ſuum de dicto Manerio, & cæteris præmiſſis, habendum dictum Manerium & cæteras præmiſſa prædicto Willihelmo Welcomb & hæredibus ſuis ad opus & uſum prædicti Johannis Jones pro termino vitæ ſuæ naturalis, & poſt deceſſum ipſius Johannis, ad opus & uſum prædicti Willihelmi Welcomb, hæredum & aſſignatorum ſuorum in perpetuum, virtute cujus, & vigore Statuti de uſibus in poſſeſſionem transferrendis, prædictus Johannes fuit ſeſitus de Manerio & Tenementis prædictis pro termino vitæ ſuæ, remanere inde præfato Willihelmo Welcomb, hæredibus & aſſignatis ſuis in perpetuum, & prædictus Johannes Jones, ſic de omnibus & ſingulis præmiſſis prædictis, modo & formæ prædicta ſeſitus exiſtens de tali ſtatu ſuo de eiſdem obiit ſic inde ſeſitus 12 Martii 8 Jacobi. It is further found by the ſaid Office, quod prædictus Willihelmus Welcomb eſt conſanguinius & hæres proximus dicti Johannis Jones, & plenæ ætatis: and a Tenure in capite is alſo found for part of the aforeſaid Lands.

Queſtion. Whether the Office be ſufficient in Law to entitle his Majeſty to Livery of the whole Lands aforeſaid upon a dying ſeiſed? And whether the Seiſin and dyed ſeiſed be well found in the Office? or that the Office be voyd, in regard of the repugnancy in finding of a double dying ſeiſed, the one in fee, the other for the life of one and the ſame Lands? Whereupon it was reſolved by the Lord Hubbart, chief Juſtice of the Common-Pleas, and Tanfield chief Baron, That the Office was and is utterly voyd in the point of dying ſeiſed, in regard of the repugnancy and contrariety thereof; whereupon a Decree was had accordingly.

Paſch. 13 Jacobi Regis.

Sir John Mohuns Caſe for Sir William Fleetwoods Lands.

William Fleetwood, Knight, late Receiver of his Majeſties Court of Wards, became indebted to the King for the Arrears of his Receit, and being ſeiſed in his Demeſn as of fee, of and in the Mannors of Cranford St. John and Cranford le mote in the County of Middleſex, did by ſufficient aſſurance in Law recondey the ſame to Sir Roger Aſhton, Knight, and his Heirs: Sir Roger Aſhton by his Deed inrolled, dated the 17 Septembris, 2 Jacobi, did give and grant all the ſaid Mannor and premiſſes, with the appurtenances, unto the Kings Majeſty, his Heirs and Succeſſors: Afterwards the Kings Majeſty by his Letters Patents dated 24 Decembris, 2 Jacobi, did give and grant all the ſaid Mannors and premiſſes, with the appurtenances, back again unto the ſaid Sir Roger Aſhton and his Heirs, Reddendum annuatim ad feſtum Sancti Michaelis pro Manerio de *Cranford St. John* 34 *l.* & pro Manerio de *Cranford le mote* 20 *s.* ſolvendum in perpetuum, pro omnibus aliis redditibus, ſervitiis & exonerationibus & demandis quibuſcunque, proinde nobis, hæredibus, vel ſucceſſoribus noſtris quoquo modo reddendis, ſolvendis, ſeu faciendis: And afterwards the ſaid Sir William Fleetwood became further indebted upon his account; whereupon the Queſtion was, Whether the ſaid Mannor were extendable and liable to any the ſaid Debts? whereupon it was reſolved by the Lords chief Juſtices, Coke, Hubbart, and the Lord chief Baron Tanfield, That the ſaid Mannors were not extendable, nor liable to any of the ſaid Sir William Fleetwoods Debts, due to the King as aforeſaid, but diſcharged in Law by the poſſeſſion of the King; whereupon a Decree was had accordingly. Rep. 346. this caſe Hubbard 64.

Trinit. 13 Jacobi Regis.

Frenches Caſe.

Upon a Diem clauſit extremum, after the death of John French, it is found, That he held one Meſſuage and twenty Acres of Land in Rottiſham in the County of Cornwall of Andrew Roll, Eſquire, by Knights-ſervice: And that the ſaid John French held likewiſe one Meſſuage and eight Acres of Land in Warpſtow in Cornwall of the late Queen Elizabeth, as of her Mannor of Ventergen in Cornwall by fealty, and 3 *s.* Rent per annum, and per quæ alia ſervitia Juratores ignorant: Afterwards, upon a Melius inquirendum, it is found, that he held the ſaid Meſſuage and eight Acres of Land in Wharpſtow of the ſaid late Queen by Knights-ſervice.

Queſtion. Whether the ſaid Meſſuage and Lands in Wharpſtow ſhould be taken and adjudged in Law, upon any or both the ſaid inquiſitions, to be holden of the ſaid late Queen by Knights-ſervice in capite, as of the ſaid Mannor of Ventergen? whereupon it was reſolved by the Lord chief Juſtice of the Common-Pleas, Hubbart, and Tanfield

field chief Baron, That the said Messuage and Lands in Wharpstow, upon both the said inquisitions, should not be taken or construed to be holden of the said late Queen by Knights-service in capite, but onely by Knight-service, as of a mean Tenure as of her said Manor of Ventergen; whereupon Decree was had accordingly.

Trinit. 15 Jacobi Regis.

Menfields Case.

NOno Marcii, 11 Jacobi Regis, Edward Sill sold the Manor of Buckland in comitatu Kanciæ, holden in capite, to Thomas Menfield and Dorothy his wife, and the Heirs of Thomas, to the use of the said Thomas and Dorothy, and the Heirs and Assigns of the said Thomas: Trinit. 12 Jacobi, Thomas and Dorothy levyed a Fine of the said Manor to William Beal and Thomas Bix, to the use of Thomas and Dorothy during their lives; the Remainder to the use of the said Thomas Menfield, and the Heirs of his body, upon the body of the said Dorothy lawfully to be begotten: and for default of such issue, to the use of Christopher Saker, and the Heirs of his body, with divers Remainders over.

Question. Whether the said Dorothy, after the death of Thomas, should be enforced to sue a Livery for a third part of the said Lands, by reason of the said Fine levyed in the said eleventh year of the Reign of the Kings Majesty, as is aforesaid or not? Whereupon it was resolved by the Lord chief Justice of the Court of Common-Pleas, Hubbart, and Tanfield chief Baron, That after the death of the said Thomas found in the said Office, there needed not at all any Livery to be sued or tendered, for that the said Lands, being originally purchased in the names of Thomas and Dorothy, and then the said Thomas and Dorothy joyning in a Fine, whereby the said Dorothy had no greater or lesser Estate then she had before; that then the said latter Estate was no conveyance for the advancement of the said Dorothy within the meaning of the Statute of 32 H. 8. whereupon a Decree was had accordingly.

Pasch. 13 Iacobi.

Kirkhams Case.

GRandfather, Father, and Son, of Lands in tayl holden of the King by Knights-service in capite: The Father is censured in the Star-Chamber, and fined at 31000 l. the Grandfather dyeth, the Fine is transmitted into the Exchequer, and the Land seised into the Kings hands: The King, by his Letters Patents under the great Seal of England, in consideration of mony payd and service, granteth the said Fine, Extent, and Lands, to one of his Majesties Privy Chamber, reserving a Rent: Issues are lost in the Court of Wards by the Father for not suing his Livery; the Father dyeth.

Question. Whether Issues lost in the Court of Wards in the time of the Father, shall not be levyed to his Majesty upon the said Lands?

Resolved

Reſolution. The Lands ſhall never be charged, till the Extent determine; whereupon a Decree was had accordingly.

17 Iacobi Regis, Trinity Term.

Churches Caſe.

IT was found by Office, 7 Eliz. that the Manor of Woodham Mortimer in Eſſex was holden of the ſaid Queen as of her Manor of Penerel by Knights-ſervice.

Queſtion. Whether this were a Bean Tenure, or a Tenure in capite? And it was enforced by his Majeſties Counſel, that the ſame was as available in Law, as if it had been found expreſly to be holden by Knights-ſervice in capite, in regard the ſaid Honor of Peneral was one of the four known and capital Honors anciently annexed to the Crown: and that all Tenures of the Kings and Queens of England by Knights-ſervice, as of that Honor, had been always taken and adjudged to be Tenures in capite by Knights-ſervice, as of that Honor which being of great importance and conſequence touching the Revenue of this Court and the Court of Exchequer concerning the ſaid Honor of Penerel: Tanfield Lord chief Baron, and Baron Altham were required to aſſiſt the Court, and deliver their Opinions therein, who having heard Counſel in debating the cauſe two whole days, the matter principally inſiſted upon being, Whether Penerel were an ancient Honor, anciently in the Crown? and whether all Tenures, as of that Honor by Knights-ſervice, have been anciently taken to be Tenures in capite by Knights-ſervice? And whether that Expoſition had been always in uſe and practiſe in the ſaid Court of Exchequer, and alſo in this Court ſince the erection thereof? And whether the ſaid Manor of Woodham Mortimer were in truth holden of the ſaid Honor in capite by Knights-ſervice, and ſo taken in former times, and appearing by former Records? Whereupon and upon peruſal of many Records, and the red Roll of the Exchequer, it appeared manifeſtly, That the ſaid Honor of Penerel was and always had been a principal Honor annexed to the Crown, called and known by ſeveral diſtinct names and appellations, as ſometimes Hatfield Penerel, ſometimes Penerel London, and ſometimes called the Honor of Hatfield Penerel of London: And yet that the ſaid Honor, and every part and member thereof, ſo diſtinguiſhed by ſeveral names and additions, was in truth but one entire Honor, and not divers: And that all Lands, Tenements, and Hereditaments, holden originally of the ſaid Honor by Knights-ſervice, are holden in capite by Knights-ſervice, and have been always ſo taken: And it was alſo proved by divers Records of ſeveral natures, that the ſaid Manor of Woodham Mortimer was in truth, and had always been holden by Knights-ſervice in capite of the ſaid Honor; and ſo appeared by divers ancient Inquiſitions, Liveries, Licenſes, and Pardons of Alienations, and other like proofs produced and read in that behalf; whereupon it was ordered accordingly.

Trinit.

Trin. 13 Jacobi Regis.

Whitneys Caſe.

IT is found by Office taken at Guildhall in London, 5 Septembris, 9 Jacobi by Mandams, That Thomas Whitney was ſeiſed in his Demeſne as of Fee, of, and in five Meſſuages and Tenements, with the appurtenances, in the Parish of Saint Katherines Creedchurch, next Algate London; And being ſo ſeiſed, 24 Januarii 1600, did make his laſt Will and Teſtament in writing, and thereby gave to his ſon, Thomas Whitney, and the heirs of his body, the ſaid Meſſuages and Premiſſes, the remainder in tail to Nicholas Whitney his ſon, and ſo being ſeiſed, died thereof ſo ſeiſed, primo Maii, 1602 the ſaid Thomas Whitney the ſon, and his heir, being then of the age of 15 years, and the tenure of the ſaid Lands is thereby found to be Soccage in Capite, Thomas Whitney the ſon and heir of the ſaid Thomas Whitney is now of the full age of 21 years.

Queſtion. Firſt, whether, if any Livery ought to be ſued, then of how much? whereupon the Lords, the Judges aſſiſtants, did reſolve, That if the ſaid Lands were deviſable by the cuſtome of the City of London; That then all paſſing by the Demeſne, no Livery ought to be ſued of any part, no more then if all had been conveyed by act executed within the Statute of 32 H. 8, it ought to have been, which point, touching Conveyance of Land held in Capite by Soccage by Act executed, had been ſundry times reſolved in this Court, upon conſideration had of the ſaving in the ſaid Stat. 32 H. 8. of Liveries, touching Land held by Soccage in capite; That no Livery of any part ought to be ſued in ſuch caſe, whereupon it was prayed that the Court would be pleaſed to take into conſideration, the cuſtome of the ſaid City touching that point, Whether all lands in London holden by Soccage in Capite, be wholly deviſable by cuſtome or not, Whereupon, 12 Februarii laſt, It was ordered that a Will ſhould be exhibited, to the intent a certificate might be had of the ſaid cuſtome, to the intent a Decree might be had according to the reſolution, whereupon, in Eaſter Term laſt, a Will was exhibited, and a certificate procured, under the common ſeal of the Chamber of the City of London, which upon a day given to be heard read, was as followeth; Videlicet, In Civitate London, talis habetur, & a tempore cujus contrarium memoria hominum non exiſtit, habebatur conſuetudo uſitata & approbata; videlicet, Quod quilibet liber homo ejuſdem civitatis, terras & tenementa ſua, infra eandem civitatem exiſtentes poteſt, & potuit legare, tam ad manum mortuum, quam quocunque alio modo, tam per teſtamentum ſuum ſcriptum, quam per ultimam voluntatem ſuam non ſcriptam, factam, ſive hujuſmodi voluntatis per mortem legantis in ſcripto fuerit reductum, & tanquam teſtamentum nuncupativum in lege Eccleſiaſtica fuerit, probatum, & quod omnia terræ & tenementa in eadem Civitate fuerunt diviſabilia & deviſa, & legabilia & legata, tam per alios in eadem Civitate terras & tenementa habentes, quam per cives & liberos homines ejuſdem civitatis per eorum teſtamentum; And ſundry Preſidents and Reſolutions of the Judges in former times, as well in the time of King Edw. 4. as of King H. 7. were mentioned and ſpecified in the ſame certificate, to have been accordingly, as by an exemplification thereof remaining upon the File of Certificates of the ſaid Eaſter Term appeareth,

peareth, dated 28 Maii, 12 Jacobi, which being read, it was prayed that allowance might be given thereof, and a Decree had accordingly, which was done.

Michael. 14 Jacobi Regis.

Boſtocks Caſe.

One Mr. William Boſtock, Father of Edward, Grandfather of Ralph, was ſeiſed in Fee of an ancient Meſſuage or Mill, and 30 acres of Land in Boſtock and Moulton, and of one other Meſſuage with a Curtilage in Boſtock, in the occupation of Lawrence Boſtock, 15 Aprilis, 18 Eliz. levied a Fine, which Fine was for the ſaid ancient Meſſuage, and the Land thereunto belonging, and the ſaid Mill, and certain parcels of Land called Tunſtalls, (except one Cloſe, parcell thereof, called Gorſty Croft) to the uſe of the ſaid William Boſtock for life, and after his deceaſe, to the uſe of the ſaid Edward Boſtock, and the heirs males of his body, on the body of Margery his wife begotten, with other remainders over in tail, the remainder to the right heirs of the ſaid Edward; And for the other Meſſuage and certain lands thereunto belonging, and the ſaid Cloſe called the Gorſty Croft before excepted, to the uſe of the ſaid Edward Boſtock for term of life; The remainder to the uſe of the heirs males of the ſaid Edward, on the body of the ſaid Margery begotten, with other remainders over in tail; The remainder over in Fee to the right heirs of the ſaid Edward, And if the ſaid Edward ſhould fortune to die (living the ſaid Margery) That then the ſaid Fine ſhould be of the ſaid laſt mentioned Meſſuage, and the lands thereunto belonging, or therewith occupied, wherein the ſaid Lawrence Boſtock lately dwelt, and of the ſaid Cloſe, called Gorſty Croft, to the uſe of the ſaid Margery, for term of life, and after her deceaſe, to the uſes aforeſaid. Edw. Boſtock died ſeiſed by Margery, Ralph within age, and died, living the ſaid Margery and William Boſtock the Grandfather; The ſaid laſt Meſſuage and Tenement being held by Knights-ſervice, De Domina Regina, in Comitatu Ceſtriæ, And that the reſt of the lands, de quo, &c. and value all the lands at 40 s. and William and Margery to be living.

Queſtion. Whether this Office be void to entitle the King to Land by marriage, or both? Whereupon it was reſolved by the chief Juſtices, and chief Baron, Coke, Herbert and Tanfield, That the Eſtate of Margery is an immediate Eſtate for life, and ſo ſetled by the Law, and that during her life, the King had no right or title, either to the Wardſhip of the body or lands of the ſaid Ralph Boſtock, Whereupon a Decree was had accordingly.

Paſch. 15 Jacobi Regis.

Metcalf and Barringtons Caſe.

Sir Ralph Boucher Knight, ſeiſed of an Eſtate of Inheritance as is found by Office of ſundry Manners and Lands in the County of York, part whereof being held of the late Queen Elizabeth by Knights-ſervice in Capite, died thereof ſeiſed, 11 Junii, 40 Eliz. and the ſame deſcended to William Boucher his ſon and heir, then of full age, being Lunatick,

Lunatick, ſhortly after whoſe death, by vertue of a Commiſſion out of the Chancery, directed to Richard Lee Eſquire, and others, to enquire whether the ſaid William Boucher, Lunaticus ſit, aut lucidis gaudet intervallis, Ita quod regimini ſui ipſius Manerii, & terrarum ſufficit necne. It is found by Office taken at the Caſtle in Saint Johns Street without the Bars of Smithfield, in the County of Middleſex, 19 Januarii, 40 Eliz. quod prædictus Willihelmus Boucher eſt lunaticus, & mentis ſuæ non compos, & lucidis non gaudet intervallis; Ita quod regimini ſui ipſius Manerii & terræ non ſufficit, & quod idem Willihelmus Boucher, per ſex annos ultimè elapſos evenit lunaticus, & non compos mentis; And it is found alſo, that he is ſeiſed of the ſaid Mannors and Lands, and poſſeſſed of ſundry goods, after which it is found by Office, primo Novembris, 42 Eliz. at the Caſtle of York, after the death of the ſaid Sir Ralph Boucher Knight, father of the ſaid Lunatick, That the ſaid Sr. Ralph was ſeiſed as aforeſaid, and died ſo ſeiſed of the ſaid Mannors and Lands, held of his Majeſty by Knights-ſervice in Capite; And that he died ſo ſeiſed, 11 Junii, 41 Eliz. And that the ſaid William Boucher was his ſon and next heir, and then about the age of 21 years, 29 Junii, 41 Eliz. And by Indenture, dated the ſame day and year under the ſeal of this Honorable Court, the government of the ſaid William Boucher his Mannors, Lands, Goods and Hereditaments was granted by the late Queen to Sir Francis Barrington Knight, and Katherine Boucher, wife of the ſaid William Boucher, who with the rents, iſſues and profits thereof, have ſince maintained the ſaid Sir Will. Boucher his wife, children, houſes, and family, according to the Covenants of the ſaid Indenture.

Queſtion. Whether the King ought to have any mean rates, as the caſe ſtandeth? Whereupon it was reſolved by the Lords chief Juſtices and chief Baron, Mountague, Hubberd, and Tanfield, That the King ought not to have any mean rates of the lands of the ſaid William Boucher, for lack of ſuing of Livery by the ſaid William Boucher, for that the ſaid William Boucher, at the time of the death of the ſaid Sir Ralph his father was, and yet remaineth a Lunatick, & mentis ſui non compos, and thereby diſabled to tender or ſue a Livery, Whereupon a Decree was had accordingly.

Trin. 15 Jacobi Regis.

Allens Caſe.

RObert Allen, ſeiſed in Fee of Land, holden in capite by Knights-ſervice, by Deed Indented, dated in July, 4 Jacobi Regis, enfeoffed his youngeſt ſon, Nicholas Allen and his heirs, to the uſe of the ſaid Robert Allen for life, and after to the uſe of the ſaid Nicholas and his heirs, in which Deed is contained a Proviſo, in theſe words; Videlicet, Provided alwayes, notwithſtanding, That if it ſhall fortune at any time or times hereafter, during all the time of the naturall life of the ſaid Robert, that he the ſaid Robert ſhall be minded, or determined to alter or change, all, or any of the ſeverall uſe or uſes, Eſtate or Eſtates, before in theſe Preſents expreſſed and declared, and to create, raiſe, limit or declare, any new or other uſe or uſes, Eſtate or Eſtates whatſoever, of, for, or concerning all or any of the ſaid Premiſſes, or any part or parcel thereof, with the appurtenances, That then, from time to time, from, or after the paiment or tender of twelve pence of currant Engliſh mony, to

to be made by the ſaid Robert Allen, or his aſſignes, to the ſaid Nicholas Allen, or his aſſignes, at or in the Church porch of the Pariſh Church of Mynſter aforeſaid, at any time or times during the naturall life of him the ſaid Robert, That then it ſhall and may be lawfull, to and for him the ſaid Robert Allen, to revoke all, or change all, or any of the ſeverall Eſtates, uſes, or limitations before expreſſed, of, or in the whole Premiſſes, or any part or parcell thereof, And that then, from time to time for ever, from, or after any ſuch tender or paiment of twelve pence of currant money to be made, by him the ſaid Robert, or his aſſignes, as aboveſaid, This preſent Writing indented, and the Livery and ſeiſin thereof had, or to be had and executed, ſhall, as touching all, or ſo much, or ſuch parcell of the afore recited Premiſſes, whereof any of the uſes or limitations before expreſſed ſhall ſo happen to be altered, changed, or revoked, be altogether fruſtrate, void, and of none effect or validity in the Law to any intent or purpoſe whatſoever, And that then alſo, from time to time for ever, from and after ſuch paiment, or tender & revocation as aboveſaid, It ſhal and may be lawfull, to, and for him the ſaid Rob. Allen, and his his aſſignes, into all and every the aforeſaid Lands, Meadows, Paſtures, and Marſh, and into every part and parcell thereof, with their appurtenances, whereof all, or any the Eſtates, uſes, or limitations above mentioned, ſhall happen to be altered, revoked, or changed, as aforeſaid, to re-enter, and the ſame to have again and enjoy, as in his or their former eſtate, And the ſaid Nicholas Allen, his heirs and aſſignes, Tenants and Farmers, and every of them, of, and from the poſſeſſion and occupation of the Premiſſes, and of every part and parcell thereof with the appurtenances, whereof the ſaid uſes or limitations ſhall be ſo altered and changed, utterly to expell, amove, and put out, any grant, matter or thing before in theſe Preſents mentioned, to the contrary thereof in any wiſe notwithſtanding: The ſaid Nicholas died 25 Aprilis, 1609. then having a ſole daughter and heir, called Barbara, of the age of two years, nine months, and twenty ſix days, leaving his wife with childe of a ſon, The ſaid Robert being minded to revoke the ſaid uſes and Eſtates, 4 Maii, 1609, In the porch of the Pariſh-Church of Mynſter, aforeſaid, tendered and offered to pay unto the ſaid Barbara, being then brought thither according to the form of the ſaid Proviſo, in the ſaid Writing indented ſpecified, The ſaid Barbara then being the onely daughter and heir of the ſaid Nicholas, twelve pence, which the ſaid Barbara then and there of the ſaid Robert received, And the ſaid Robert Allen then cauſed to be written upon the back of the ſaid Deed indented, theſe words, videlicet, Memorandum, that the within named Robert Allen, the 4 day of March, in the year of our Lord God, 1609. 7 Jacobi, in the Church-porch of the Pariſh of Mynſter, in the Iſle of Sheppey within mentioned, did tender to be paid to Barbara Allen, daughter and heir of the within named Nicholas Allen, then deceaſed, the ſumme of twelve pence, of currant money, according to the form of the Proviſo within mentioned; And which in performance thereof ſhe received, And the ſaid Robert Allen by one other Indenture, dated 20 Junii, 7 Jacobi, rehearſing the ſaid feoffment, Proviſo, and paiment of twelve pence, thereby ſheweth, That he the ſaid Robert Allen having adviſedly conſidered of his Eſtate, of, and in the Premiſſes, and being minded wholly to revoke the uſes, in, and by the ſaid recited Deed, created, limited, or raiſed, and to the end to enable himſelf ſo to do, having before the making thereof, and ſince the death of the ſaid Nicholas Allen tendered and paid to Barbara, daughter and heir of the ſaid Nicholas, twelve pence of lawfull

lawful Engliſh mony in the Porch of the ſaid Parith Church of Myn-ſter aforeſaid, in the preſence of Thomas Hills, &c. honeſt and lawful witneſſes thereunto called, doth by theſe preſents publiſh, juſtifie, and declare to all preſent and to come, That he hath altered and revoked, and by theſe preſents doth fully and altogether revoke, diſanul, and make fruſtrate and voyd, all the ſeveral eſtates, uſes and limitations in the ſaid recited Deed indented, declared and expreſſed, and before in theſe preſents recited, of and in all and ſingular the premiſſes, with their appurtenances: And by theſe preſents doth alſo notifie and declare, That the plain intent and meaning of the ſaid Robert Allen is, That he the ſaid Robert Allen, from the ſealing and delivery of either part of this Indenture as his act and deed to John Allen his Son, Thomas Kingdown and John VVood, or to any two of them joyntly or ſeverally, ſhall ſtand ſeiſed of and in all and ſingular the premiſſes, with the appurtenances, in his Demeſn as of fee, as in his former Eſtate, and to the onely ſole and proper uſe and behoof of him the ſaid Robert, his Heirs and Aſſigns for ever; any thing in the ſaid recited Deed indented, contained, or ſpecified, to the contrary thereof notwithſtanding: The Son was born the 15 day of October following; Robert Allen dyed the 19 of April, 1614. All this is found by Office, after the death of Nicolas Allen; and that the ſaid Robert Allen took the profits from the death of the ſaid Nicolas till the death of the ſaid Robert: and that after the death of the ſaid Robert, John Allen the eldeſt Son of the ſaid Robert, and his Heir, took the profits till the death of the ſaid John: and that from the death of the ſaid John, till the finding of the Office, Ralph Litiſter and Petronel his wife, one of the Daughters and Heirs of John Allen, took the profits by vertue of the laſt Will of the ſaid John.

Queſt. Whether the King be entituled to the Wardſhip of the body of the Son, and to the cuſtody of the Land? Whereupon it was reſolved by the chief Juſtices and chief Baron, Montague, Hubbart, and Tanfield, That the Tender made by the ſaid Robert Allen to the ſaid Barbara Allen, Daughter of the ſaid Nicolas Allen, was a good Tender, and Revocation of the firſt former Deed, made by him to the ſaid Nicolas Allen his ſecond Son as aforeſaid: and that there was no Wardſhip upon the death of the ſaid Nicolas, but that the Land ought to go in a right line to the Heirs of the ſaid John; whereupon a Decree was had accordingly.

Trinit. 15 Jacobi Regis.

Bulkleys Caſe.

William Bulkley and Margaret his wife, 30 Julii, 10 Jacobi, did purchaſe the Farm of Milborn Statham to them and the Heirs of the ſaid William: The ſaid William and Margaret, 28 Decembris, by Indenture did bargain and ſell the ſaid Farm to Richard Swain, William Grove, William Freke, and John Babington, and their Heirs, upon truſt to ſell the ſame to pay his Debts and Legacies: And for the maintenance and marriage of Elizabeth his Daughter, William Bulkley did by that Deed alſo covenant with the Bargainees, that he and

his wife, before the Feaſt of Pentecoſt then following, ſhould by Fine with proclamations grant the ſaid Farm to the Bargainees, and their Heirs, upon the ſaid Truſt: By that Deed William Bulkley reciteth that the ſaid Richard Swain is neer ally'd to William Grove, as his Uncle, William Freke is his Uncle-in-law, and John Babington is his Brother-in-law: and further did covenant with the Bargainees, That he and his Heirs, for the natural love and kindred between him and them, ſhould immediately after his deceaſe ſtand ſeiſed to the uſe of the ſaid Kinſmen and their Heirs, of all ſuch parts of the ſaid Farm, as before the deceaſe of the ſaid William ſhould not be executed by Fine, or other execution of Eſtate, to the purport of the ſame Deed, upon the truſt and confidence aforeſaid: And by that Deed the ſaid William and Margaret did make a Letter of Attorny to make Livery and Seiſin, but no Livery was made, nor any Fine levyed, neither was that Deed ever inrolled: And of all the parties to that Deed, VVilliam Grove was onely of blood to the ſaid VVilliam Bulkley. The ſaid VVilliam Bulkley, by another Deed indented, dated 30 Novembris, 14 Jacobi, in conſideration of money, did bargain and ſell the ſaid Farm unto the former Bargainees, and others, and their Heirs, upon condition, that if VVilliam Bulkley, his Heirs or Aſſigns, do at any time after that pay to the ſaid Bargainees, their Heirs or Aſſigns, the ſum of 12 d. then the bargain and ſale ſhould be voyd; this laſt Deed after VVilliams death was inrolled.

Queſtion firſt, Whether VVilliam Grove onely, being Uncle of blood to the ſaid VVilliam Bulkley, ſhall take all by the Covenant of ſtanding ſeiſed in the firſt Deed, or but a moyety, becauſe the other three Kinſmen are not of blood to the ſaid VVilliam Bulkley, but by marriage?

Secondly, Seeing that nothing is paſſed by the firſt Deed in the life-time of VVilliam Bulkley, whether this laſt Deed of bargain and ſale, which was not inrolled in his life-time, but after his death, be ſuch an Execution of Eſtate in his life-time, as ſhall hinder the raiſing of the uſe by the firſt Deed of Covenant? Of which Caſe, the Judges Aſſiſtants having taken conſideration, did reſolve, That the uſe, by the Covenant in the firſt Deed, did not enure to them which were not of blood, but of alyance: But how much of the ſaid laſt did paſs and execute in the ſaid VVilliam Grove, who was of blood, the ſaid Lords the Judges reſted doubtful, and would be further adviſed: And they all agreed, that the bargain and ſale upon the Enrolment was a countermand of the Covenant in the firſt Deed, by relation; whereupon a Decree was had accordingly.

Mich. 15 Jacobi Regis.

Dymmocks Caſe.

UPon an Inquiſition taken of a Diem clauſit extremum, 28 Decembris, 12 Jacobi, after the death of Sir Henry Dymmock Knight, it was found, that Anthony Ballard and Robert VValcop were ſeiſed in their Demeſn, as of fee, of and in the Manor of Pipe in the County of VVarwick: and that thereof being ſo ſeiſed, by their Indenture ſhewed in evidence to the Jury, dated the third of July, 13 Jacobi, for money, and other valuable conſiderations, grant, bargain, and ſell the

the ſaid Manner unto the ſaid Sir Henry Dymmock, and to his Heirs; and that the ſaid Manner is holden by Knights-ſervice in chief: and is alſo found, that Sir Henry Dymmock, 14 Octob. 13 Jacobi, before the Enrolment of the Indentures, dyed; and that Ann Dymmock is his Coſin and next Heir, and of full age: and the ſaid Inventure of bargain and ſale was enrolled the 23 of Octob. 13 Jacobi.

Queſtion. Whether Ann Dymmock, the Heir to Sir Henry Dymmock, is to ſue her Livery or not? Whereupon it was reſolved by Montague, Hubbart, and Tanfield, chief Juſtices and chief Baron, That the ſaid Ann, being now the wife of Sir VValter Earl, Knight, ought to ſue forth her Livery after the death of Sir Henry Dymmock; whereupon it was ordered accordingly.

Paſch. 15 Jacobi Regis.

Tredways Caſe.

IN anno ſecundo Jacobi, upon a Diem clauſit extremum, it was found, that Sir VValter Tredway dyed ſeiſed of the Manner of Dale in the County of Buckingham, holden of the King in capite by Knights-ſervice; and that Edward Tredway, an Infant, was his Son and Heir: In the 13 Jacobi, upon a Devenerunt, after the death of the ſaid Tredway, it is found that he dyed the Kings Ward; and that Lettice and Elizabeth are his Siſters and Coheirs of full age: and that Lettice the eldeſt Siſter, to prevent to have Religious Education within this Realm, in the life-time of her Brother departed this Realm without Licenſe, and went to Doway in Flanders, where ſhe remained a Nun profeſſed, contrary to the Statute in that behalf made, 3 Jacobi, chap. 145. And it is further found, that by reaſon thereof Lettice Tredway ought to take no benefit of Lands, by conveyance or deſcent, until ſhe returned and received the Sacrament, and the Oath preſcribed by that Statute: but that the ſaid Elizabeth, being the next Heir of her blood, and no Recuſant, ought to receive the profits of all the Lands ſo extended, by force of the ſaid Statute of 3 Jacobi.

Queſtion firſt, Whether Elizabeth Tredway, the youngeſt Siſter, ſhall ſue the Livery of all the Lands out of the Kings hands, as Siſter and Heir to Edward, by force of that Statute of 3 Jacobi, chap. 145. Lettice the elder Siſter being yet living? Alſo whether the Statute of 3 Jacobi muſt not be intended of Lands in the parties own occupation, which conveyeth, deviſeth, or from whom it ſhould deſcend, and not for Lands in the knowen occupation, as this Caſe is? Whereupon it was reſolved by the Lords chief Juſtices and chief Baron, Montague, Hubbart, and Tanfield, That the ſaid Elizabeth cannot, as the next of kin to the ſaid Lettice, challenge or demand of right to have Livery out of the Kings Majeſties hands of the part and purparty of the ſaid Lettice, by vertue of the ſaid Statute made 3 Jacobi, neither by the words nor by the intent of the ſaid Statute: but that his Majeſty may, if it pleaſe him, retain the ſaid moyety of the ſaid Lettice in his own hands, until ſuch time as ſhe, according to the ſaid Statute made 1o primo Eliz. ſhall take the Oath appointed by the ſaid Statute; whereupon a Decree was made accordingly.

Mich.

Mich. 15 Jacobi Regis.

Cromwels Caſe.

UPon a Diem clauſit extremum, after the death of Robert Cromwel, Eſquire, it is found by Office, That Sir Henry Cromwel, Knight, was ſeiſed in fee of a Meſſuage and certain Lands in Huntington, called the Auguſtin-Friers, holden of the King by Knights-ſervice in capite, and ſuffered a common Recovery thereof, to the uſe of himſelf and Dame Joan his wife for their lives, Remainder to the ſaid Robert Cromwel his ſecond Son, and the Heirs males of his body, the Remainder to the right Heirs of Sir Henry Cromwel, as by an Indenture of the limitation of uſes appeareth, with a power given in the ſaid Indentures to the ſaid Robert Cromwel to limit the uſe of the ſame Lands to his wife for her life for a Joynture: Dame Joan dyeth, Sir Henry Cromwel ſurrenders his Eſtate for life to Robert Cromwel, who according to the power limiteth the Eſtate to Elizabeth his wife for her life for her Joynture: Sir Henry Cromwel dyeth, Sir Oliver Cromwel his Son and Heir ſueth Livery; Robert Cromwel hath iſſue a Son, and dyeth ſeiſed in fee of other Lands holden in Socage, his Son being within age.

Queſtion. Whether the Son and Heir of Robert ſhall be in Ward during the life of Elizabeth, who is Tenant for life of all the Capite Lands, and the Remainder thereof is onely deſcended? Whereupon it was reſolved by the chief Juſtice and chief Baron, Hubbart and Tanfield, That the ſaid Oliver Cromwel, Son and Heir of the ſaid Robert Cromwel, during the life of the ſaid Elizabeth his Mother, ought not to be in Ward to his Majeſty, by reaſon of the ſaid Office found after the death of the ſaid Robert his Father deceaſed, nor ſue forth Livery for the ſaid Lands in the ſaid Office mentioned, nor any thing therein contained, in regard the ſaid Oliver Cromwel is in by Remainder as aforeſaid; and his ſaid Mothers Joynture and Eſtate for her life in the ſaid Lands was made by vertue of the power given by Sir Henry Cromwel, Father of the ſaid Robert, after whoſe death the Son and Heir of the ſaid Sir Henry Cromwel ſued his Livery; whereupon a Decree was had accordingly.

Hillar. 16 Iacobi Regis.

Saunders Caſe.

IT was found by Inquiſition upon a Diem clauſit extremum, after the death of John Saunders, Quod prædictus Johannes Saunders, ante obitum ſuit ſeſitus in dominico ſuo ut de feodo, de & in uno capitali Meſſuagio in Maidſtone in comitatu Kanciæ: and ſo of divers other Lands particularly ſet forth in the ſaid Inquiſition: And after in the ſaid Inquiſition, where the dying ſeiſed of the ſaid John Saunders is found, the Jury ſay, Quod prædictus Johannes Saunders in brevi prædicto nominatus ſic ut præfertur ſeſitus in feodo ſimplici poſtea ſcilicet 23 Januarii ante captionem hujus Inquiſitionis obiit inde ſeſitus.

Queſtion

Queſtion. Whether there be a ſufficient ſeiſin found in John Sanders, it being in the firſt place ante obitum, not ſhewing whoſe death? And in the ſecond place, it being, ſic ut præfertur ſeſitus exiſtens in feodo ſimplici, without ſaying, inde ſeſitus. And whether it be ſufficiently found, That John Sanders died ſeiſed in Fee ſimple, becauſe for want of the word (ſic) it doth not appear of what Eſtate he died ſeiſed? Whereupon it was reſolved by the Lords chief Juſtices, and chief Baron, Mountague, Hubbart, and Tanfield, that the ſaid Office was ſufficient notwithſtanding the ſaid exceptions, And thereupon a Decree was had accordingly.

Hillar. 16 Jacobi Regis.

Green and Lapworths Caſe.

EDward Lapworth, owner of the Manor of Sower, in Comitatu Warwick, on the Northſide of the River, holden in Capite, and Richard Green, owner of the Manor of Wicken on the Southſide of the ſaid River, holden by Knights-ſervice, of the Manor of Chiſlemore, parcell of the Dutchie of Cornwall; The old Brook or River running between the ſaid two Manors in a crooked courſe by reaſon thereof, upon every ſudden flood, did overflow much of the meadow and land on both ſides adjoyning, For prevention whereof, the ſaid Richard Green and Edward Lapworth, owners and occupiers of the lands adjoyning to the ſaid Brook, did by conſent, cut a River, or courſe for the water to run ſtreight, for the more eaſie paſſage thereof, Richard Green, owner of the Manor of Wicken, by a verball conſent with Edward Lapworth, owner of the Manor of Some, took the profits of the ſeverall necks of the Southſide of the ſaid ſtreight Brook, And Edward Lapworth the owner of Some, did take the profits of the nooks on the Northſide of the ſtreight Brook; Edward Lapworth dieth, his ſon of full age, who likewiſe receiveth the profit of the Northſide; And Richard Green continueth the poſſeſſion, and taketh the profits on the Southſide, without any particular agreement or denial the one of the other; and then Richard Green dieth, his heir at full age.

Queſtion. Whether here is ſuch a dying ſeiſed of the nooks of the Southſide of the ſtreight River, as ſhall cauſe the heir of Richard Green to ſue Liverie of any lands, or not? Whereupon it was reſolved by the Lords chief Juſtices, and chief Baron, Mountague, Hubbart, and Tanfield, That the ſaid Richard Green was only Tenant at ſufferance; And that there is no deſcent of the nooks and land ſo exchanged; Whereupon a Decree was had accordingly.

Paſch. 17 Jacobi Regis.

Rigbies Caſe.

IT is found by Office, that Anne Rigby, the day that ſhe died, was ſeiſed in her Demeſne as of fee, of a Meſſuage or tenement, and two ſhops in London, of the yearly value of 20 l. per ann. holden of the late Queen by fealty only, And that ſhe being ſo ſeiſed, made her laſt Will in writing, whereby (inter alia) ſhe charged the ſaid lands, with two ſeverall

annuities of 10 l. a piece, in his Anglicanis verbis; videlicet, Item, I give and bequeath unto Thomas Short my ſon, and his heirs, ten pounds, yearly to be paid out of my Lands and Tenements for ever: item, I give to Frances Short my ſons youngeſt daughter and her heirs for ever, ten pounds, yearly to be paid out of all my Lands and Tenements whatſoever: Item, I freely give, and abſolutely give and deviſe unto my Executors hereunder-named, for and towards their charge and performance of this my laſt Will, and to the heirs of my Executors for ever, as well my freehold Lands, Leaſes, goods, and chattels whatſoever, except ſuch and ſo much Lands as ſhall amount yearly to the ſum of 20 l. payable betwixt my ſon, Thomas, and his daughter Frances, and to their ſeverall heirs for ever. It is found further, that ſhe appointed Jeffrey Davis, and Henry Havercampe, her Executors, and that they after her death, entered into the ſaid Meſſuage and Shops, by vertue of the ſaid Will, and were thereof ſeiſed, prout Lex poſtulat, And that the ſaid Frances Short, and Jane Short were her next heirs; That is to ſay, daughters and coheirs of Thomas Short, who was the ſon and heir of the ſaid Anne.

Queſtion. First, Whether the Clauſe of exception in the Deviſe of the Lands to the Executors, doth amount to a countermand of the Deviſe of the Lands to them, and amount to a Deviſe of 20 l. land to the Legatees, and ſo deſtroy all other Legacies bequeathed by the Will?

Secondly, admitting it to be a joynt-deviſe of 20 l. land, to her heirs, and another (who ſurvives) How much deſcends upon the Office chargeable with mean rates? Whereupon it was reſolved by the chief Juſtices and chief Baron, Mountague, Hubart and Tanfield, That all the Lands ſhould paſſe by the Will to the Executors, and the Rents payable out of the Lands to the Legatees, And that all the Lands were well Deviſed, as aforeſaid, by the cuſtome of the City of London, and no way enabled by the Statute of 32 H. 8. of Wills, and ſo no Livery; primer ſeiſin, nor mean profits due in reſpect of the ſaid Deviſe ſo had and made as aforeſaid:

Paſch. 15 Jacobi Regis.

Goads Caſe.

HEnry Goad, ſeiſed in Fee of Land holden by Knights-ſervice, in Capite, by his laſt Will in writing, dated 15 Auguſti, 14 Jacobi, Deviſed all his Lands to Joan his wife, and Henry Goad his ſon, To have and to hold, to Joan his wife, and Henry his ſon, and their heirs, And after Henry the father dies ſeiſed, leaving Henry his ſon and heir, an Infant; Joan in her widowhood compounds for the Wardſhip, both of the body and of the Lands of the Infant her ſon, and pays thereſore; Afterwards Joan dies, and her ſon ſurvives, being ſtill under age.

Queſtion. Whether after the death of Joan there ought to be any new compoſition for the lands of the Infant, Henry, Joan dying ſeiſed of no lands, But thoſe that were ſo joyntly deviſed to her and her ſon as aforeſaid by the ſaid Henry Goad the Deviſor? Whereupon it was reſolved by the Lords chief Juſtices, and chief Baron Mountague, Hubbart, and Tanfield, That the ſaid Henry Goad the ſon, ought to be in Ward for that which accrued unto him by ſurvivor, after the death of the ſaid Joan his mother, whereupon a Decree was had accordingly.

Paſch.

Paſch. 17 Jacobi Regis.

Mountagues Caſe.

SIr Walter Mountague knight, before his death, was ſeiſed in Fee of the Manor of Hanging Houghton, in the County of Northampton, and of 7 acres of Meadow and Paſture, lying in a Cloſe, called Oldfield, in Hanging Haughton aforeſaid, ſometime bought of one William Rugby; and ſo ſeiſed the ſaid Sir Walter Mountague, 13 Januarii, Elizabeth enfeoffeth Henry Mountague knight, now chief Juſtice of the Kings Bench, of 104 acres of land in Hanging Houghton aforeſaid, to the uſe of Sir Henry Mountague and his heirs, By vertue whereof, the ſaid Sir Henry Mountague was thereof ſeiſed in Fee, the 7 acres bought of Rugby was none of theſe; That the ſaid Sir Henry Mountague being thus ſeiſed of the Premiſſes; And the ſaid Sir Walter Mountague ſeiſed of the reſt of the ſaid Manor, The ſaid Sir Walter Mountague and Sir Henry Mountague, by Indenture, 4 Junii, 2 Jacobi, made between them of the one part, And Roger Mountague Eſquire, and Robert Dixon yeoman of the other part, well for the conſideration of 1000 l. paid by the ſaid Sir Henry Mountague unto the ſaid Sir Walter Mountague, as for the naturall love and affection, which the ſaid Sir Walter Mountague had, and did bear towards Anne his then wife; And for increaſe of the joynture of the ſaid Anne, and for her better maintenance, in caſe ſhe ſurvived the ſaid Sir Walter; And for the naturall love and brotherly affection, which the ſaid Sir Walter Mountague then had, and did bear towards the ſaid Sir Henry Mountague, and alſo for the eſtabliſhing of all his Lands, in the name and blood of them the ſaid Sir Walter Mountague, and Sir Henry Mountague, covenanted for them, their heirs and aſſignes, to, and with the ſaid Roger Mountague, and Robert Dixon to levy a Fine before the Feaſt of the Nativity of our Lord, to the ſaid Roger Mountague, and Robert Dixon and their heirs, of all the Manor and Premiſſes before named to theſe uſes following; Videlicet, All the lands contained in the Deed of feoffment, dated, 13 of Januar. 36 Eliz. containing 140 acres to the uſe of the ſaid Sir Henry Mountague, and his heirs for ever, And concerning the parcells of land, called Oldfield, &c. containing 160 acres (in which the 7 acres bought of Rugby are) to the uſe of the ſaid Sir Walter Mountague and his heirs for ever. And of all the reſidue of the Premiſſes in Hanging Houghton, to the uſe of the ſaid Sir Walter Mountague, and Anne his wife, during their naturall lives, and the longer liver of them, without impeachment of waſte, during the lives of the ſaid Sir Walter and Anne, and after the deceaſe of the ſaid Sir Walter and Anne, and the longer liver of them, Then to the uſe of the firſt ſon of the body of the ſaid Sir Walter lawfully begotten, and the heirs maiſs of the body of ſuch ſon, and ſo to the ſixth ſon; And for default of ſuch iſſue, then to the uſe of the ſaid Sir Henry Mountague and his heirs for ever. In Trinity Term, 2 Jacobi, a Fine was levied accordingly, that Sir Walter Mountague long before, and at the time of his death, was ſeiſed in Fee of 22 acres of land, meadow, paſture, and wood, with their appurtenances, in VVillock in the County of Monmouth, and of three acres of land in VVigor in the ſaid County, and of two acres of land in Redwick in the ſaid County, The ſaid Sir

VValter

Walter Mountague ſo ſeiſed in Fee of the lands in the County of Monmouth, and of the Cloſe called Oldfield in Hanging Houghton, in the County of Northampton, made his laſt Will and Teſtament in writing, dated 2 Decemb. 12 Jacobi, and by the ſame deviſed his lands in Wilwick, being 27 acres, to Mountague Morgan his ſon, and to his heirs, and his houſe and grounds in Cheapſtowe for ever, to be converted and made an Hoſpitall for ten or twelve poor people, and for a houſe for a Preacher, and for maintenance of thoſe poor people and Preacher, he bequeatheth all that his Paſture ground in Hanging Houghton, called Oldfield, (abutting it) with two meadow Cloſes thereunto belonging, letten by Leaſe for 7 years unto William Newman and Henry Smith, and appointed his brother James Mountague, late Biſhop of Wincheſter, and Sidney Mountague Knight, and one of the Maſters of Requeſts, and one Robert Jones to be his Executors, Sir Walt. Mountague ſo ſeiſed of the Premiſſes aforeſaid deceaſed, 23 of March, 13 Jacobi, without any iſſue of his body lawfully begotten, and that the ſaid Anne overlived him, and is now living, That Edward Mountague Knight of the Bath, is brother and heir of the ſaid Sir Walter Mountague of 54 years of age, That the Mannor of Hanging Houghton, and all the lands there, except the 7 acres in Oldfield are holden by of whom they know not, And concerning the tenure of the ſaid 7 acres in Oldfield in Hanging Houghton; That long before the death of the ſaid Sir Walter Mountague Knight, Henry 8. was ſeiſed in Fee in Right of the Crown, by diſſolution of the late Monaſtery of St. Edmunds-bury in the County of Suffolk, of the Mannor of Warkton, in the County of Northampton, And that the ſaid King by his Letters Patents, 18 of May. 33 of his Reign, did grant to his beloved Councellor, Edward Mountague Knight, the chief Juſtice of the Kings Bench, and his heirs, the ſaid Mannor of Warkton, to hold of the King his heirs and ſucceſſors, during the life of the ſaid Edward by Fealty only for all ſervices, and after by the twentieth part of a Knights Fee, The ſaid Sir Edward Mountague Knight, ſo ſeiſed of the ſaid Mannor of Warkton in Fee, one William Rugby was ſeiſed in Fee of the ſaid 7 acres in Oldfield, and held the ſame of the ſaid Sir Edward Mountague, chief Juſtice, as of his Mannor of Warkton by fealty, ſuit of Court, and 8r pence rent, the ſaid William Rugby conveyed theſe 7 acres to the ſaid Sir Edward Mountague and his heirs, by vertue whereof the ſaid Sir Edward Mountague was ſeiſed in Fee of theſe 7 acres then held, prout Lex poſtulat, and afterwards the ſaid Sir Edward Mountague being ſeiſed, both of the ſaid Mannor of Warkton, and of the 7 acres in Hanging Houghton died ſo ſeiſed, after whoſe death, as well the ſaid Mannor of Warkton, as the ſaid 7 acres of land in Hanging Houghton, deſcended to Sir Edward Mountague Knight, father of the ſaid Sir Walter Mountague, as ſon and heir of the ſaid Sir Edward Mountague, chief Juſtice, which ſaid Sir Edward Mountague was ſeiſed thereof in Fee, and the ſaid Sir Edward Mountague held the ſaid Mannor of Warkton of Queen Elizabeth in Capite, by the twentieth part of a Knights Fee, and the ſaid Sir Edward Mountague held the ſaid 7 acres in Hanging Houghton aforeſaid, prout Lex poſtulat. The ſaid Sir Edward Mountague being ſo ſeiſed, conveyed the ſaid 7 acres in Hanging Houghton, (amongſt other lands) to the ſaid Sir Walter Mountague and his heirs, by vertue whereof the ſaid Sir Walter Mountague was ſeiſed in Fee, and ſo died ſeiſed; And ſo upon the whole matter found as aforeſaid, the Jury knew not how they might affirm the ſaid 7 acres to be holden from the time of the death of the ſaid

Sir

Sir Walter Montague, and therefore desired the advice of the Court: The Lands conveyed 13 Januarii Eliz. to Sir Henry Montague and his Heirs, worth 20 s. per annum: The Lands conveyed the 4 Junii 2 Jacobi, to the use of Sir Walter Montague, and Ann his wife, worth per annum 10 l. Oldfield and the seven Acres worth per annum 33 s. 4 d. And Ignoramus found of the Lands in Monmouthshire, and that they are worth 20 s. per annum.

Questions of the said Case were as followeth:

First, Sir Edward Montague seised in fee of the Manor of Warkton held in capite, purchaseth a Freehold containing seven Acres, that was held of the same Manor in Socage; Whether the seven Acres after this purchase be held in capite?

Secondly, Sir Walter Montague seised in fee of the Manor of Hanging Houghton held in capite, and seven Acres in Hanging Houghton held in capite (by admittance) 36 Eliz. excepts Sir Henry Montague his Brother of certain parcels thereof; and 2 Jacobi, Sir Walter Montague and Sir Henry, in consideration of 1000 l. paid to Sir Walter by Sir Henry his Brother, and for the love he bare to Ann his wife, and for encrease of her Joynture, and for love and affection to his said Brother, and to establish his Lands in his own name and blood, levyed a Fine of all, and declared the use of the Land in the Feoffment, 36 Eliz. to the use of Sir Henry Montague and his Heirs; and of 143 Acres parcel of the Manor of Hanging Houghton, and of the seven Acres to the use of Sir Walter and his Heirs: and of the rest to the use of Sir Walter and Ann his wife for life, the Remainder to the first Son of Sir Walter in tail, &c. and so to the fifth Son, the Remainder to Sir Henry Montague in fee, the 143 Acres and seven Acres not amounting to a third part: Whether this be a Conveyance by act executed of the two parts within the Statute of Wills, so that he cannot after by his last Will devise the said 143 Acres and seven Acres in Oldfield, being not a full third part residue?

And a third Question was by way of admittance, after the said conveyance by act executed Sir Walter purchaseth a Messuage and forty Acres held in Socage, and deviseth the said 143 Acres and seven Acres, and the said Messuage be after purchased to his Executors for erection and maintenance of an Hospital, and the said forty Acres to Montague Morgan and his Heirs, all the said Messuages and Lands, and the said Oldfield, seven Acres purchased of Rugby as aforesaid, and devised by the said Sir Walter, not amounting to a third part: Whether the Devise be good in all or in part, or meerly void? Whereupon it was resolved by the Lords chief Justices and chief Baron, Montague, Hubbard, and Tanfield, as followeth; That the said seven Acres of Meadow and Pasture, lying in Oldfield and Hanging Houghton, purchased of the said William Rogby by Sir Edward Montague Lord of the said Manor of Warkton, in the case before expressed, is holden of the King in capite by Knights-service, as the said Manor of Warkton is held, of which said Manor the said seven Acres was sometimes held in Socage as aforesaid, until the said purchase: And that the Will of the said Sir Walter, for all the Lands devised by the said Sir Walter Montagues Will as aforesaid, scituate and lying in Hanging Houghton aforesaid, is void, for that they amounted not to a third part upon the Statute executed, by the said Conveyance and Fine levyed by the said Sir Henry and Sir Walter Montague, the same Conveyance being made upon natural affection and advancement of his Wife: And

though the ſaid 1000 l. were payd by the ſaid Sir Henry Montague unto the ſaid Sir Walter, yet in regard the ſaid advancement and Joynture of the ſaid Sir Walters wife by the ſaid Sir Walter moved from himſelf, and the ſaid conſideration mony of 1000 l. moved not from the ſaid Sir Henry for the ſaid advancement: and if it had moved from the ſaid Sir Henry, yet it did not onely move the ſaid advancement, but the ſame proceeded from the love and affection of the ſaid Sir Walter, which was the cauſe and meter of the ſaid Conveyance: Therefore they the ſaid Lords the Judges aſſiſtants declared their Opinions in that point alſo to be, That the ſaid Conveyance was within the ſaid Statute by act executed; and that the Lands ſo deviſed, lying in Hanging Houghton aforeſaid, ought to deſcend to the ſaid Sir Edward Montague and his Heirs, as Brother and Heir of the ſaid Sir Walter Montague: And ſo the Will of the ſaid Sir Walter was voyd for all the Lands in Hanging Houghton, for that there is not a full third part deſcended: And that although the ſaid Deviſe were to a charitable uſe, yet the ſame cannot take away the ſaid Lands which ought to deſcend to the Heir upon the ſaid Conveyance, notwithſtanding the Statute of charitable uſes: Laſtly, they the ſaid Lords and Judges aſſiſtants declared their Opinions to be, that the Lands purchaſed in Wales, after the Conveyance and Eſtate executed and holden in Socage, is voyd for a third part, and ſtands good for two parts, in that at the time of the ſaid Deviſe, and death of the ſaid Sir VValter Montague, he was ſeiſed in fee of the ſaid ſeven Acres in Oldfield holden in capite, whereby the ſaid Deviſe of the ſaid Socage Lands in VVales was voyd for a third part; whereupon their Lordſhips Opinions were decreed accordingly.

Mich. 18 Jacobi.

In Camera Stellata.

RObert Heath an Attorny, and Clark of the Kings-Bench, exhibited his Bill againſt Jonathan Bret and five other Defendants for perjury in the five, and ſubornation in Jonathan Bret himſelf: The caſe was this, Francis Bret deviſeth his Lands, and dyes without iſſue; Jonathan Bret, being his Brother and Heir, pretends the Deviſe to be revoked, and enters in part of the Land devised: And in treſpaſs brought againſt him, and tryed at the Bar of the Common Bench, the queſtion was, If the Deviſe were revoked or not? And to prevent the pretended Revocation, the Plaintiff produced many witneſſes, which depoſed to that point; and he alſo produced the now Plaintiff in this ſuit, which teſtified, that Jonathan Bret came to him the Fryday being the ſeventeenth of October, 15 Jacobi, and ſaid to him, that Francis Bret was come to London, and in his Journey conceived that he had ſeen ſome Apparitions, and that he came to London the ſame day, and ſome other collaterall matters: And the Jury upon all the evidence gave verdict for the Plaintiff in the ſame Action. After which, Jonathan Bret reported and publiſhed, that Heath was perjured, for which Heath brought his Action in the Kings Bench againſt Jonathan Bret, who juſtifies, that Heath depoſed wickedly in the Common Bench, that Francis Bret was bound in his bed, and diſtract of his wits

three

three weeks or twenty days before his death; upon which issue was joyned, and tryed before Montague chief Justice by Nisi prius, and at that Tryal the other five Defendants were produced to prove the justification, which did swear it accordingly; but Verdict passed for Heath the Plaintiff, and he had 40 l. damages and 10 l. costs: and after exhibited his Bill against these Defendants for the same perjury: And at the hearing two questions were moved; First, if the Plaintiff shall be received to complain, being the party grieved? and resolved, that he shall be, the perjury being palpable, and the practice apparent. Secondly, the perjury being assigned in verbis conceptis, as it ought: And these Defendants confessed, that they swore the same words, or the like in effect, if that shall be sufficient proof of their Oath; and resolved, that not: and upon that the Cause was dismissed to the common Law without Costs.

Coram Concilio, 10 Novembris, 1619. 17 Jacobi Regis.

Sir John Bingleys Case.

IN the matter wherein Mr. Attorny doth inform against the right honorable Thomas Earl of Suffolk, late Lord Treasurer, and Sir John Bingley, Knight, Master of the Tallies, for abuses and extortions in their Offices: The charge of the Bill against Sir John Bingley, among other things, was, That he had extorted and drawn divers sums of mony from several persons, as namely Paul Furrey, &c. and naming others in particular: and then followeth a general Charge, That the Defendants had in like manner extorted divers sums from divers others his Majesties subjects. To the particulars named in the Bill, the Defendants make answer; and upon the proofs Mr. Attorny endeavors to prove the particulars named in the Bill, and then to prove also divers other sums of divers other persons by force of the general Charge, and amongst others, the keeping back and defalking by Sir John Bingley to his own use, of divers sums of mony delivered to him out of the Receit, to be payd to one Captain Baugh, and others, Pyrats; upon the hearing this matter of Baugh was charged against the Defendants, as upon and within the general Charge: Wherunto the Councel of the Defendants alledged, That it could not be taken hold of against the Defendant upon the general Charge, for that it was of another nature then the particulars were of; the particulars being for extorting and taking part of the Kings mony from such as were to receive it out of the Exchequer: and this could be taken no otherwise then as a breach of trust, and misdemeanor against the said Baugh and the Pyrats; for the Defendants received the mony out to their use, and to divide it amongst them, and if he payd it not, the wrong and offence was to them onely, and cannot be said to be extortion, but breach of trust: They alledged further, That the Examination of this matter by Mr. Attorny was but few days before publication; so as it not being in the particular nor general charge of the Bill, and examined so shortly before publication, it was impossible for the Defendants to make any Defence;

ſence; for he could not underſtand, whether that matter would be urged againſt him before publication was had, and that he ſaw it in the Books: But if ſo, he might have had convenient time and knowledg of the matter, he could have made clear proof, that he had not delt unjuſtly therein: And he ſhewed forth many Acquittances, purporting (as was affirmed) the full payment of all the ſaid mony which now the Court could not take notice of, being not proved in the Books: and thereupon the Defendants Councel prayed the Judgment of the Court, whether the matter of Baugh ſhould be urged againſt him, as an offence punishable upon the Information, as the Caſe ſtandeth: whereupon the Court took very grave and mature conſideration, and conceiving the ſame to be a Caſe meet to be reſolved and explained for this and time to come, did give Opinion and Judgment, That where the ancient Rule and courſe of this Court hath been, That if the Will charge the Defendant with certain particulars, being of one nature, and then concludeth with a general Charge of divers others of like nature, not naming them, the Plaintiff hath liberty to prove what particular he can upon that general Charge, and thoſe ſhall be accepted as good proofs againſt the Defendant by way of aggravation onely, and ſo as ſome of the particulars be proved.

Now this Caſe tendeth rather to expound and give power and limitations to that general Rule, rather then croſs it.

As, firſt, That no Plaintiff ought to lay his particular Charge and Inducement upon two or three particulars, and then examine ten or twenty upon the general; but there muſt be a proportion, and the particulars muſt be the more, and the ſupplement the fewer, and not to make two or three particulars as a drag-net, to draw all a whole life in examination, where he ſhall not have convenient knowledg to make his Defence, which all men ought to have.

Secondly, The generals muſt not be of the higher quality, and the particulars of the leſſer, but to be ſo marſhalled, as the particulars be of the higher, and the generals of the meaner quality.

Thirdly, Thoſe generals muſt be of the ſame kinde, and not of a higher nature than the particulars.

And for as much as this Cauſe concerning the ſaid Baugh, and the Pyats, is examined againſt Sir John Bingley upon the general charge, and is more tranſcendent, and of a higher nature, then any of the particulars, and ſtanding on many parts, and being not mentioned in the Will or Pleading, it was impoſſible for the Defendant to make that Defence unto it, as happily he might have done, wherein no man ought to be intercepted: and therefore the whole Court was of Opinion, That the ſaid Sir John Bingley ought not to be proceeded againſt for the matter concerning the ſaid Baugh and Pyats upon the proofs now made againſt him, but that he ought to be admitted to his juſt Defence, if he ſhall be queſtioned for it.

Mich. 19 Jacobi, In the Star-Chamber.

Adams againſt Cannon.

ADams did exhibit his Will againſt Mr. Cannon, and in the beginning thereof did charge him generally to be a Maintainer and Solliciter of other mens Cauſes, amongſt which he did maintain four cauſes

cauſes in particular, and thoſe four were certainly and particularly charged againſt him by the Bill, but at the hearing of the Cauſe, the Court was not ſatisfied, that any of thoſe four were ſufficiently proved, but the plaintiff proved divers other maintenances upon the generall charge, but in regard the particulars were not proved, the Court would not ſentence him for the particulars grounded upon the generalls, and diſcharged him thereof, ſo that he was wholly diſcharged, upon the reaſons mentioned in Sir John Bingleys Caſe, and in this Caſe all the Rules in Sir John Bingleys Caſe were again confirmed.

Mich. 19 Jacobi, In the Star-chamber.

WRight did exhibit his Bill againſt the Defendant for conſpiracie, to Indict him for a common Barreter, and for ſeverall perjuries, in their Depoſitions, upon this Triall in the Traverſe, whereupon he was found guilty, and by Judgment was convicted for a common Barretter. In this caſe it was reſolved, that after conviction, the witneſſes ſhall not be queſtioned for conſpiracie alone, becauſe two whole Juries have found him guilty, By which all men are concluded and eſtopped, But if there were perjury in their Depoſitions, as in this caſe there was, then the perjury is puniſhable, notwithſtanding the conviction, and the conſpiracie ſhall onely be made uſe of for aggravation, and ſo was it in this caſe, Three of the Defendants were fined for perjury, and diſabled their Teſtimonies, and the conſpiracy onely made uſe of for aggravation. In this caſe the Bill was loſt from the File.

Mich. 20 Jacobi, In the Kings Bench.

A Man granted a ſtipend or annuity, pro conſilio impenſo & impendendo, to be paid at Michaelmas and Annunciation, Si petitum foret, habendum, for the life of the Grantee, The Grantee dies, and for arrerages, his Executors bring Debt, without alledging of Demand, It ſeems to Haughton and Chamberlain, Juſtices, that the Rent paſſed by the Grant, and that the Feaſts are onely times appointed for paiment of it, and the Demand is not knit to the Feaſts, but may be made at any time after, but it ought to be made before Action brought; For Haughton took a differrence, between Debt demanded, where there is not any time limitted for paiment of it, there ſæpius requeſitus is ſufficient, but if it be an Action upon the Caſe, there actuall demand ought to be made, And Lee, chief Juſtice, took a difference, where it is a Rent iſſuing out of land, or a place appointed for paiment of it, and where it is perſonall, and no place appointed; for if no place be appointed, if demand ought to be made upon the day of paiment, it ſhould be in the power of the Grantor to pay it when he would, which is unreaſonable: See Mannors Caſe, Coke, 13 Eliz. Dyer. Debt for annuity.

Trin. 1623. 20 Jacobi.

THe Plaintiff being Pariſhioner in Launder in Eſſex, brought an Action of the Caſe againſt the Defendant, being Parſon of the ſame Pariſh, and counts that he at the Pariſh of Launder, had laid out for Action upon the Caſe.

the Parſon, 15 Cheeſes for his tythes, and the Defendant ſuffered them to remain in the houſe of the Plaintiff for ſuch a time, and did not fetch them away, to his damage. At this Court, two exceptions were taken by Bridgeman: Firſt, that an Action upon the Caſe doth not lie, for refuſing to receive tythes: Secondly, admitting that it did, that then the Count was inſufficient, in ſo much that the ſetting forth was in the Parish of Launder, and it doth not appear that there was any tender at the houſe of the Plaintiff. And Haughton Juſtice, conceived that for the matter Action lieth very well: as if an occupier of Land ſet forth tythe Corn or Hay, and the Parſon doth not carry that away in convenient time, but ſuffers that to remain upon the Land Action lies; But for the ſecond, it ſeems, it doth not appear that tender was made in the houſe of the Plaintiff, nor that he was damnified; But Dodridge, Juſtice, conceived, that when an occupier of Land ſets forth tythe Corn or Hay for tythe, that by this, the property is altered, and by that the Grain or Hay, is become the Grain or Hay of the Parſon, and then if he ſuffer that to remain upon the land of the Pariſhioner, action upon the Caſe lies, but it is not ſo in the Caſe of tender of Cheeſe, nor of other perſonall or mixt tythe; for of that after the tender, the property remains in the firſt owner, as in caſe of tender of Rent of money, Rent-Corn, or other ſuch thing: And for the ſecond, he conceived, that the tender ought to be made at the Church, or to the Parſon or Rector, and for that, the tender not being alledged to be at his houſe, the Parſon being there, it was not ſufficient; And Lee, chief Juſtice, conceived that the tender was very good, and ſhall be intended to be made at his houſe, and by conſequence, that both for the matter and manner action lies, Paſch. 20 Jacobi. Rot. 286. See 13 H 4. Action upon the Caſe.

Trin. 3 Caroli Rot. 1170. In the Kings Bench.

Roberts verſus Lord.

Action for Slander.

William Roberts, being an Attorney of this Court, counts againſt the Defendant, that he was a good Subject of the King, and hath for many years then laſt paſt, been a Clerk of Robert Heath, and Robert Shute in this Court, and that he hath well behaved himſelf towards the King, and all men, noble and others, and ſo hath got great credit to himſelf by that, and hath been free of all offences; And that in Trinity Term, primo Caroli Regis, he had been an Attorney in this Court, for one John Ecmobridge, and preſented for him againſt the Defendant, a Latitat, that he delivered to the Sheriff, who upon that made a Warrant to a Bailiff to arreſt the ſaid Lord, the Defendant, by force of which, the ſaid Bailiff arreſted him, upon which, the ſaid Lord not being ignorant of the Premiſſes, the ſaid Lord having ſpeeches with Ecmobridge of the Plaintiff, concerning his honeſty and good behaviour, as an Attorney in this Court, and concerning the ſaid Latitat, the Defendant, ex malitia præcogitata, ſaith of the Plaintiff theſe words, Go tell your Lawyer Roberts, That I ſay, he is a baſe Raſcall, and I will make him loſe his ears; And I will teach him, or any Lawyer of them all, to have a Writ ſerved on me, and upon not guilty pleaded, the Jury found for the Plaintiff, and in arreſt of Judgement for the Defendant, that the words were not actionable, but upon debate between the Judges, it was reſolved without contradiction, that the words were actionable,

actionable, and upon that, the Plaintiff having vetoit for 20 Marks damages his Judgement, and the opinion of the Court was, that the Defendant ſhould be bound to his good behaviour, but after, upon the importunity of his Counſel, this was remitted.

paſch. 1 Caroli Regis, Rot. 207.

The Biſhop of Cheſter, Plaintiff againſt John Freeland Defendant.

Replevin.

GEorge, Biſhop of Chicheſter, brought a Replevin againſt John Freeland, for taking of three Mine in Alingborn Park in Suſſex. The Defendant avows the taking, and ſaith, that Anthony, the predeceſſor of the Plaintiff, was ſeiſed of the ſaid Park, in right of his Biſhoppick, and inſeiſed the 1 of February 44 Eliz. By his Deed granted a Leaſe of the keeping of the Park, and all profits appertaining unto it, to the Defendant for his life, Et ulterius conceſſit pro executione officii prædicti, five marks, with clauſe of diſtreſſe, Una cum, a Livery, of 13 s. 4 d. nec non paſturam pro duobus equis una cum, the Windfalls, which grant was confirmed by the Dean and Chapter, in the life-time of the Biſhop, and ſhews further, that this Park hath been anciently granted, with this fee of five marks; And for as much as 33 s. 4 d. was behinde, he avowed the taking. The Plaintiff pleads the Statute of 1 Eliz. Chap. 25. and ſaith, that this paſturage was a larger fee then was ever granted before, and upon that the Avowant demurred.

Yelverton Juſtice.

Juſtice Yelverton argued for the Avowant, and he conceived, that he ought to have Return, And the ſole Queſtion in this Caſe, as he ſaith is, If this new addition of the paſturage to the grant of the Office of the Keeper makes all the grant void, for that, that the paſturage is new the office ancient: Or, if the Law ſhall make ſuch conſtruction, that for that augmentation it ſhall be onely void, and ſhall ſtand for the other? And he conceived, that this is ſevered in the intention of the Biſhop, ſevered in the clauſe of the Grant, ſeverall in ſpecie of the five marks, and is not ſo interjoyned, but that it may be ſevered from the ancient fee, and diſtinguiſhed from it, ſo that in this caſe, it is good for one, notwithſtanding that be void for the other, and he inſiſted upon two grounds, warranted by the Biſhop of Saliſburies Caſe: Firſt, the grant of this Office is of neceſſity, and for that being granted with the ancient fee, this is out of the generall reſtraint of 1 Eliz. Chap. 25. by an equitable conſtruction: Secondly, when grant which extends to the diminution of a revenue, or impoveriſhing of a Biſhop void by this Statute, unde ſequitur, that if this grant had tended to the diminution of the revenue, or impoveriſhing the ſucceſſor, it is not void; And for the better explanation and expoſition of theſe grounds, he put this diverſity; That whereas the ancient fee is granted with ſuch addition, that the ancient fee is by this confounded in all, or converted into another nature, there the addition makes all void, but when there is another addition which differs ſpecie, and doth not make ſuch confuſion, otherwiſe it is, as if the five marks had been granted with clauſe of diſtreſſe in land, which was uſually charged, and other land which was never charged, and onely void to the diſtreſſe in the new land; But if no land was anciently charged with diſtreſſe, but the perſon onely, and he have

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the grant with clauſe of diſtreſſe proviſo, that it ſhall not charge his perſon, there the grant is void in all, for to have any rent charge with diſtreſſe is in diminution of the revenue, and impoveriſhing of the ſucceſſor, and if the diſtreſſe be void, and the Parſon cannot be charged, then it is grant of an Office without Fee, which is void, ſo he ſaid according to the firſt part of his difference, that where the ancient Fee is confounded in all, or converted into another nature, there the grant is void, as if the uſuall Fee be five marks, and he grants 5 l. there all is void; for the five marks is ſo confounded in the other ſum, and made ſo intire, that you cannot cut between them; And to the caſe of Butler and Baker, 3 Coke, 33 b. The gift there of intirenelle of Rent, and ſuch grant as he ſaid is ſo void, which cannot be made good by any intention; for notwithſtanding the Grantee releaſe all to the Biſhop but the five marks, yet it is not made good by that; for void, ab initio, according to reaſons given, in the Biſhop of Salisburies Caſe, 10 Coke, 62 a. but yet he ſaid that this Statute reſpects the ſucceſſor onely, and for that he conceived that if in the firſt caſe the Biſhop had granted 5 l. onely for his life, and five marks after, that there the ſucceſſor ſhall not avoid the grant, for no intention appears to charge the ſucceſſor but to hold him within the bounds of the Statute, and for that he ſaid, That if in the principall caſe he had granted a fee of ten marks every 2 year, that there alſo it is good; for if the ſucceſſor be overcharged one year, it is eaſed another year, And this caſe, as he ſaid, is within the reaſon of the Dean & Chapter of Worceſters Caſe, 6 Coke 36. A rent was reſerved at one Feaſt, which uſually payed at four Feaſts, and yet good, but if the ancient fee, according to the ſecond part of the difference, be turned into another nature, it is alſo void, as if this Office be granted with a fee of ſo many buſhels of Corn, or loads of Stovers, which amounts to five marks, there it is void, for that, that it is turned into another nature, and the ſucceſſor may be prejudiced in providing of Corn and Stovers, &c. And this difference he grounded upon Mountjoys Caſe, 5 Coke fol 4. And theſe caſes were put by him upon the ſaid ground and the differences aforeſaid.

Upon a ſecond argument, it was for that, that this grant of the paſturage pro duobus equis is not ſo depending upon the other, but that in conſtruction of Law it may be ſevered, as if the five marks be granted with nomine pœnæ, for that, that the grant of nomine pœnæ onely impoveriſheth the ſucceſſor, and not the grant with the ancient fee, and for that, the grant ſhall be good for the ancient fee, and void for the reſidue, for the grant of the fee, Stat per ſe, and the other may be ſevered; And to this purpoſe he put the caſe: one annuity was granted with nomine penæ, and for that it was ſaid, if an Action be brought, for the nomine pœnæ againſt the ſucceſſor that aid doth not lie, but if annuity be brought there, he ſhall have aid, which proves that the Law conſiders thoſe, as things ſevered in their natures, and he remembered the caſe of Boulton againſt the Biſhop of Chichiſter, upon which he collected that the Biſhop had uſualy granted to two Councellors at Law, to each of them 40 s. per an. and now he granted to one 4 l. per an. notwithſtanding that this be not in diminution of the revenue, nor more chargeable to the ſucceſſor, yet for that, that it is a great prejudice in another degree, to him is void, for he cannot by any indentment be ſo well adviſed by one Councellor as by two; but if the Biſhop had granted a Councellor 40 s. and by the laſt clauſe had granted to him other 40 s. it is void for the laſt, and good for the firſt, and this difference he grounded upon an

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ancient Book, 2 Ed. 2. Feoffments 94. But Boulton in this caſe did not prevail, for that, that he did not aver that it was the ancient Fee: and ſo he ſaid, if a Biſhop have a Steward of his Manor anciently, with certain fee annexed to it, and he makes a Counſellor his Steward, and grants to him the fees of the Steward, and alſo 40 s. pro conſilio impendendo, there it is voyd for the laſt againſt the Succeſſor, and good for the firſt: But if the Biſhop had granted the Office in this manner, videlicet, I grant to you the Office of Parkerſhip with a fee ſubſequent, videlicet, five Parks, a Livery-coat, Paſture, &c. for there he conjoyns and makes all one fee, and intermingles and tumbles all together: But in our Caſe he grants the Office, and ſaith, that he ſhall have for the exerciſe of the ſaid Office five Parks, &c. and alſo Paſture pro duobus equis; and this he grounds upon the Book of 31 H. 6. 15. b. where a Grant is made, by the name of a Corrody, of Bread, Beer, Chamber and Stable; and there the Defendant ſaith, that notwithſtanding that a Stable and Chamber by it ſelf cannot be called a Corrody, yet when they are joyned together, they ſhall be ſaid of the ſame nature that Corrody is: And this caſe is more ſtrong, for that it is with a necnon, which ſevers that from the precedent clauſe: And he ſaid, That the Earl of Shrewſburies Caſe, 9 Coke 47. b. is the more ſtrong, for there a Grant is adjudged voyd for the time paſt, and good for the time to come: and this conſtruction, as he conceived, ought to be made of this Grant, for it was not the intent of the Biſhop to make a voyd Grant to Freeland, which was his ancient Servant: and this caſe is to be compared to Colſhils Caſe, 3 Coke 82. b. 83. a. for there the Statute of 5 Ed. 6. makes all voyd, for there the lawful Covenant depends upon it, which was unlawful; but here the caſe is otherwiſe, for here it is ſevered, and a diſtinct clauſe, and the Statute of primo Elizab. ought not to be expounded ſo fatally, that every ſmal addition ſhould make all the Grant voyd: and for that he conceived, that the addition of Windfalls ne vitiat the Grant, for it is a thing caſual, and it is a chance if any ſhall fall or not; as the omiſſion of Harriot, which is caſual, doth not make the Leaſe by the Biſhop voyd, according to 6 Coke 38. a. So if there had been ſuch addition, That Freeland ſhall have the old Pale when a new is made, this doth not vitiate the Grant: the ſame Law, if the Biſhop had granted liberty to him to lodg in the Lodg, which was never granted before, for de talibus minimis non curat lex, and it is for the advantage of the Biſhop that he lodg there: But to the Grant of the Paſturage, it is a matter of profit, and for that, that it tends to the damage and diminution of the Revenue of the Succeſſor, is voyd; but it doth not vitiate the precedent clauſe, but that ſtands well; and this is grounded upon the Reaſon of two books, 2 Ed. 3. 19. 19 Ed. 3. where Fine was levyed of a Way and Paſturage, &c. upon a Writ of Covenant for the Way, and there adjudged that the Fine for the Way was good, for a good foundation, but voyd for the Paſturage; alſo the Biſhop in this caſe hath not averred, that the Paſture was ever uſed, and ſo upon all the Record he concluded, that the Defendant ought to have Return.

Crook, Juſtice, ſeemed to the contrary.

Crook. First, He conceived, that as well the Livery-coat and the Windfalls, as Paſturage, ought to be intended upon this Record to be new addition; and his Reaſon is for that, That the Advowant took averment onely upon that, that the five Parks was the ancient Fee, and ſo confeſſed impliciter, that the Livery and Windfalls were additions:

for this Rule is given in Colthurſts and Pewſhins Caſe, Com. and Dyer 109. That theſe things which concern the Title, ought to be expreſly averred; and as this caſe is the plaint, that all theſe were new additions, for then his Plea is double.

Secondly, he ſaid, that admitting this, he conceived, that not onely the addition of the Livery, but alſo of the Paſture, ſhall make the Grant voyd; but alſo the addition of the Windfalls againſt that which was ſaid by Yelverton, for it was parcel of the Inheritance, and ſo Grant of them in diminution of the Inheritance: And for that it is ſaid in Dyer 6 Ed. 6.71. Iſhams Caſe, That Windfalls do not appertain to the Office of a Keeper without preſcription; and the Guardian in Chivalry ſhall not have them, according to 43 Aſſiſ. for they are parcel of the Inheritance, as it is in Harlackendens Caſe, 4 Coke: and for that it was adjudged, Paſch. 13 Jacobi, B.R. upon a ſpecial Verdict between Smith and Bowls, that where Lands were uſually demiſed, except the Trees: and Bowls being Prebend, made a Leaſe according to limitation of the Statute, without exception, and adjudged, that it was voyd for that cauſe; for the predeceſſors have profit by the exception, and ſo may the ſucceſſor alſo; and for that, that this omiſſion was in diminution of the Inheritance, it was held voyd againſt the ſucceſſor.

Thirdly, He held, that this Grant in all parts of it is ſo entire, that in conſtruction of Law it ſhall be voyd in all; and yet he profeſſed, that his deſire and labor was at the firſt to maintain that, in ſo much that it was made to a poor man, and that the addition was not of any value: But for that, that he could not find any book to warrant the Grant good when a new thing is added, he was conſtrained to argue againſt the Avowant: And his firſt Reaſon was upon the Statute of primo Eliz. for at the Common Law it was good, but the Statute takes away that which the Common Law allows: for he obſerved, that all Statutes, till the 32 H. 8. were made to reſtrain Church-men from purchaſing, as the Statute of Mortmain: but after the Statutes are to reſtrain them from alienation; and this was one Reaſon of erecting of Chapters, as it is the Dean of Norwiches Caſe, 3 Coke: And for that if the Biſhop do not purſue ſtrictly the Statute, his Grant is voyd. And to this purpoſe he remembered a Caſe which concerned the chief Baron Tanfield and one Fox, and the Caſe was, The Demeſns of a Manor were uſually demiſed, but the Copyhold and ſervices not; and this notwithſtanding, a Leaſe was made of all together, reſerving the accuſtomed Rent, and adjudged voyd: And he cited Scambler and Wats Caſe, 41 Eliz. where the Biſhop of Norwich had the Office of a Steward, to which the Fee of 10 l. appertained, and alſo the Office of an Under-ſteward, to which the Fee of 4 l. appertained; and he granted both to two men, where one was within age, and after confirmed at full age in the life of the Biſhop, and yet adjudged voyd: and there this Caſe was ſaid, when both Offices are granted to one man by one Grant, that they are voyd; for the Statute hath been ſtrictly expounded always. And for that in the Biſhop of Herefords Caſe and Stacy, 43 Eliz. it was adjudged, That if the Biſhop makes a Leaſe for three lives, reſerving the ancient Rent, and they make a Leaſe for a hundred years, if three men ſo long live, which is confirmed by the Biſhop and Chapter, that the Succeſſor may avoyd this Leaſe, and yet out of the words of the Statute: And upon the like Reaſons, Jewel and Elmers Caſe, 5 Coke, was adjudged in favor of the Biſhop, for that that no remedy for the Succeſſor

ceſſor for the Rent which was reſerved: And ſo always the Law conſiders, if the authority which is given to the Biſhop by the Statute be as well purſued as at the Common Law. If a Letter of Attorny be made to make Livery, and the Attorny doth it upon converyance, or è converſo, is voyd, 11 H. 4. 3. 42 Aſſiſ. The ſame Law, if a Letter of Attorny be to make Livery of one Acre, and this is made of two, it is voyd in all, becauſe he couples two, and they are not named in the Feoffment of which Acre Livery ſhould be made, according to the fourth of H. 7. 5. But if the Acre be named certain, and according to Perkins, as white Acre or black Acre, there otherwiſe it is. And as to Boultons Caſe, which was cited out of the other part which was Hillary 31 Eliz. he ſaid, that Boulton averred in this Caſe, that that was the ancient Fee: but the Reaſon for which Judgment was given againſt him, was, for that that this was a voluntary thing, to make election of one man to be of his Councel, and not an Office; and it was not of neceſſity to have this man or that man of his Councel, for peradventure the Biſhop would not make ſuch election: and ſo that Reaſon ought to be applyed to our Caſe; for the Office of a Park is no ſuch Office of neceſſity as Steward: And for that this Grant, being good onely by equitable conſtruction, ought not to be enlarged more then needs, he admits Reaſon grounded upon the parts of the Deed; and the effect of that was an entire Grant: and to prove that, he obſerved, Firſt, that all was granted by one ſelf-ſame clauſe, that is, per executionem Officii: Secondly, that the Fees were conjoyned with words copulative, that is, [una cum] conjoyned and annexed all the parts to invicem, according to the Caſe 8 H. 7. 4. 13. all the Fees depend upon one percipiendum, for they are limited to be payd out of the ſame Land.

Fourthly, The ſame clauſe of Diſtreſs goes to all, and it is more large then the percipiendum, and extends not onely to Land charged, but to all the poſſeſſions of the Biſhop: And for that he conceived, that if there be not any other matter in the caſe, that this addition which he hath made makes all voyd, for by that all the Tenements and all the poſſeſſions of the Church ſhall be diſturbed: And for that he denyed the Caſes which were put by Yelverton for Law, as the nomine pœnæ hanging, and the limiting of new Diſtreſs in a new place, and ſaid, all the Grant in theſe caſes is voyd: And for that this Grant being by one Deed, which is ſo conjoyned and coupled in all the parts of it, to the ſame perſon, and upon the ſame conſideration, he conceived is voyd in all: And he agreed, Colſhuls Caſe, 3 Cok. 8. and Dive & Manninghams Caſe, where it is agreed, That where a mixture is made of things, ſome of which are warrantable and ſome not, that the Law adjudgeth all voyd: and for expreſs authority in the point, he cited Parker, the Archbiſhop of Canterburies Caſe 43 Eliz. where the Archbiſhop of Canterbury granted the Office of Surveyorſhip, with the ancient Fee, to a Parker, and ulterius he granted to him paſturam pro duobus equis in a Park, and all the Grant adjudged voyd; and a fortiori in this caſe, where there are ſo many additions as ſhall be intended in this Record, where the Avoiwant doth not take any expreſs averment, nor is implyed by the Livery-coat, and Windfalls appertaining anciently to the Office, and for this not like to the Biſhop of Herefords Caſe, which was adjudged Trinity 45 Eliz. Rot. 1039. for there the Defendant entitled himſelf by Leaſe, upon which the ancient Rent was reſerved, &c. The Plaintiff by proteſtation pleads, that it was not the ancient Rent, but for Plea ſaith, that the Lands were the Demeſns of the Biſhop,

and

and always held in propriis manibus of the predeceſſors, Abſque hoc, that it was anciently demiſed, upon which the Defendant demurred, and adjudged for him, in ſo much that it was admitted that the ancient Rent was reſerved: Sequitur ex conceſſis, that it was anciently demiſed; and for that he concluded, that Judgment ought to be given againſt the Avowant.

Harvy. Harvy, Juſtice, agreed with Crook, and before his Argument he made the like proteſtation as Crook had made, ſcilicet, That he deſired to maintain the Grant, for that it was made to a poor man, and the addition was not of moment: And firſt he confeſſed, that it was in ſome doubt at the firſt in the addition of the Livery-coat, as this Caſe is, will make the Grant void: for he obſerved, that addition of that was in the diſ-junctive, ſcil. either a Livery-coat, or 13 s. 4 d. and ſo in election, and for that that nothing paſſes before election, and it is not averred that this was payd, and made ſome doubt if this would make the Grant void: Alſo this Livery was to be payd at Michaelmas and the Annunciation; and though one Livery which is entire may be payd at thoſe Feaſts, makes the caſe the more doubtful for the incongruity of it: But for that it was in the power of the Grantee to make election, and it was out of the Grantor, it ſeems, that notwithſtanding theſe Objections, that for theſe additions the Grant was void ſo as to the Paſture: He was alſo doubtful, for that, that it was for the enablement and neceſſary uſe of a Keeper, and for that Reaſon his Diligence, which is a quality neceſſary for a Keeper, as it is agreed in Nevils Caſe, Com. But in ſo much that this is charge to the Succeſſor, he was ſatisfied as to that: And ſo to the Windfalls, he alſo doubted of that, for that that they are caſual, as if he had granted to them an Ayry of Hawks, if any build in the Park: but for that, he conſidered with himſelf, that Windfalls may be of great value: for he himſelf remembered, that in the Earl of Cumberlands Park, called Appleby Park, there were ſo many fell at one time that were worth 2000 l. and for that he conceived that for this addition alſo all the Grant is void: But when he conſidered all theſe additions together, and the frame and compoſition of the Grant ſo conjoyned with theſe conjunctions copulatives, una cum & nec non, he conceived that all the Grant is void, for nihil eſt in this caſe to make that a diſtinct ſentence: And it is not like to the caſe in 7 Ed. 4. where the King in diſtinct clauſe, ex ulteriori gratia, grants, &c. for a new ſentence and new clauſe: but in our caſe, the conjunctions copulatives anner one to another, as it appears 38 H. 6. 28, 29. 8 H. 7. 5. Dyer 75. And to the Report, Caſes which were cited, he agreed them; as the Biſhop of Salisburies Caſe, where Surveyorſhip was granted to two, which was uſually granted to one, and adjudged void; for no more ought to be impoſed upon the Succeſſor then is neceſſarily required: and ſo this Statute always hath been expounded favorably for the Church. And to this purpoſe he cited the Biſhop of Yorks Caſe, which was Hillary 5 Elizab. there it was adjudged, That a Reſervation to a Dean and Chapter, in time of the Vacation, was void, and that the Succeſſor ſhould have it: And he remembered Jewel and Elſmores Caſe, and ſaid, That Juſtice Yelverton, Williams, and Tanfield, were of opinion, That a Leaſe of Tythes for years was good, in ſo much that Debt lieth upon it: And remembered the Caſe of Kambler, where the High and Under-ſtewardſhip were granted to one, and for that tumbling of Offices together the Grant

Grant was void: And ſo here, the ancient and new fee being coupled together, all is void: as in Mountjoys Caſe, 5 Coke, where a reſervation was made out of ſeverall things; And ſo was Tanfields Caſe cited before, for there the Demeſnes of the Manor were uſually demiſed, and the ſervices and Copihods not; and a Leaſe being made of all the Manor, reſerving 10 l. Rent; videlicet, 5 l. out of the Demeſnes, and 4 l. out of the ſervices made at the Grant void: And Knightyes Caſe, 5 Coke, is found upon the ſame reaſon, for the reſervation is found upon the ſame reaſon; for the reſervation being intire at the firſt, the videlicet cannot ſever that after; Hinc ſequitur, that theſe additions being ſo coupled together, and conjoyned, that they cannot be ſevered; And for that, the ſucceſſor may avoid it: for it is charged to him to his diſinheritance, and ſo he concluded, that Judgement ought to be given againſt the Avowant.

Hutton Juſtice, conceived, that the Avowment ought to have return, and to make the Caſe ſingle: Hutton.

The firſt anſwered to the Objection made by Juſtice Crook, That is, If the Livery, or 13 s. 4 d. The paſturage and the windfalls ſhall be accompted for new fee, in ſo much that the Avowant hath avowed the 5 marks onely to be ancient fee; And he ſaid, that he need not to averre more, becauſe the 5 marks onely is in queſtion, and the avowry made for that onely.

Secondly, though that the avowry be in ſome ſort a declaration, in which a Title is made to have return, yet it is in nature of a bar alſo, to excuſe the wrong, in which it ſuffereth if it be good to common intent.

Thirdly, the Biſhop of Salisburies Caſe, to which he ſaid that conſideration was to be had to the pleading thereof, and plead in the ſame manner, for it is not averred the reaſonable expence in equitando, and diet were the accuſtomed fees: Alſo nothing there taken for new, but that which the Biſhop hath alledged, the which is the paſturage for two horſes; for if queſtion were made, if he alledged the Liverie and windfalls alſo of new, yet his plea ſhall not be double.

To the ſecond Objection, that the Grant was of Rent out of all his lands in Suſſex, and that the diſtreſſe is given in all the lands of his Biſhoprick, in which caſe it ſhall be intended, that the diſtreſſe ſhall be of greater extent then the debt, which ſhall make the grant void,

He anſwered, firſt, that it is not alledged that the Biſhop hath any land out of Suſſex, and it ſhall not be intended without ſpeciall ſhewing:

Secondly, it ſhall be intended, that ſuch diſtreſſe was annexed to the former Grant, for the averment of the Avowant is, that the ſaid 5 marks are the uſuall Rent, and it ſhall be intended the ſaid 5 marks, with all the circumſtances.

To the mater in Law, he conceives that two things are conſiderable, the expoſition of the Statute, and the expoſition of the Grant.

For the expoſition of the Statute, he ſaid, that this is a particular Statute, that for that, it ought to be pleaded as it is reſolved in Holland and Elmers Caſe, and many other books, though that this hath a touch in it concerning the King by way of exception, and alſo a particular conſtruction ought to be made upon it; for no generall Rule holds place in the expoſition of the Statute, the moſt generall is, that a penall Statute ſhall not be taken by equity, but this hath more exceptions.

But firſt, the miſchief before the Statute is to be conſidered, then the words of the Statute, then the intent.

To the firſt, before the Statute; The Biſhop, with the conſent of the Dean and Chapter, by way of confirmation (not by way of aſſent) might in any manner charge the Biſhoprick, or alien it; for, 32 H. 8. doth not abridge, but enlarge the power of the Biſhop to make a Grant by himſelf; And the Caſe of Dyer, 109. 30. was reſolved by all the Juſtices, that the Statute which gives contra formam collationis, ſhall not extend to the Biſhops; for the Law always intended their acts good, which were with the conſent of the Chapter, And for that the intent of this Statute was to reſtrain the power of the Biſhop, and it was a ſpeciall reaſon at that time; for this came after the time of Queen Mary, in which all the Biſhops were Romiſh, and intended to be deprived, and for that, they in all likelihood, would provide for themſelves out of their Biſhopricks, and for that this Law was made, by which it is provided, that they ſhall not make diminution in their Revenues, upon this principally, that their ſucceſſors ſhould not be impoveriſhed, and for that this Law hath been expounded againſt the very words, that the Grant ſhall be good againſt the Biſhop himſelf which made it, 5 Coke, Caſe of Eccleſiaſticall perſons; And one reſolution upon that Statute, according to the very words, but without queſtion againſt the intent of the makers, hath produced no ill; for after the reſolution in Fox and Collins Caſe, there have been frequent and concurrant Leaſes for years, and alſo attempts to make concurrant Leaſes for three lives, but this was adjudged void in Elmers Caſe, 5 Coke, but to him is the ſame reaſon in both Caſes.

To the words of the Statute, That all gifts, grants, &c. ſeems that this intends to our Caſe, for this is belonging to the Biſhoprick, as it is in 10 Coke, the Biſhop of Saliſburies Caſe ſhall be intended concerning; And without queſtion, the clauſe, of other things, extends onely to lands and poſſeſſions, and not to a Grant of an Office, and for that, for neceſſity and conveniencie, grant of Office was out of the intent of the Statute, as it was reſolved, Hillary, 10 Eliz. Rot. 758. between Hall and the Biſhop of Ely, where he recovered an annuity againſt the ſucceſſor, upon the grant of the keeping of the houſe in Holborn, with the fee of 3 l. which grant was made after the beginning of the Parliament, to which the Act hath reference, to make all Grants void, And for that the grant of the office being out of the intent of the Statute, and being another form preſcribed, then the granting of them, ſhall be adjudged according to the equity and conveniency, And for that they are not to be reſembled to Caſes put of Leaſes of land: for, for them the Statute hath appointed a form which ought to be obſerved: as 28 H. 6. A form of taking of lands is appointed to Sheriffs, and for that he held, that if the Biſhop reſerve no Rent to himſelf, the Leaſe is void: That the uſuall Rent is reſerved to the ſucceſſor, in ſo much that the Statute hath made all Leaſes void: But thoſe upon which the uſuall Rent is yearly payable, in which the word (yearly) ought to be ſatisfied, but in ſuch caſe, if the Biſhop releaſe the Rent, yet the Leaſe remains good, but if Tenant in tail releaſe all the Rent reſerved upon a Leaſe made by him but 12 d. where the ſole queſtion of the like ſuit, if the acceptance of 12 d. by the iſſue ſhall binde him, ſo that he ſhall not claim more Rent, but be conceived that ſmall or trifling alterations, as reſervation of a Pepper-corn, or made by word, doth not vitiate the Leaſe: ſo alteration of days of payment, or leading out the Pariſh, as the Dean of Worceſters Caſe is: ſo in the principall Caſe, if the fee were to be paid by the Bailiff where it was to be paid by the Receiver, and ſuch like.

But

But our caſe of Grant of office being out of the intent of the Statute, and not bound to a form ſhall be expounded according to conveniencie, as all other Statutes are: as the Statute of 32 H. 8. which gives power to the Tenant in tail to make Leaſes for three lives; this by conveniencie ſhall be expounded to take away diſcontinuance which was at the common Law; and for that, he held that the Grant of an Office for 21 years void, notwithſtanding the clauſe of this Statute.

And for that now it is to conſider of the Grant it ſelf, and that is of an ancient Office, with fee of 5 marks, which is the ancient fee, nec non, the paſturage for two Geldings; And he ſaid, that he conceived, that the moſt convenient and equitable conſtruction, is to make that good for the Office and Fees, which are ancient and void for the new, which tends to the impoveriſhing of the Biſhop; for the fee of 5 marks, and the paſturage of the two Geldings, may well be ſevered, as things diſtinct in their nature in the intent of the Grantor, and the very meaning of the Grant; I agree, that if the Grant had been of 5 l. fee, that this ſhall be void, for there can be no diviſion in ſuch caſe; in ſo much that it is an intire thing, though that, that includes 5 marks; but in our caſe the fees are ſeverall, and may be ſeverally recovered, and there may be ſeiſin and diſſeiſin of one, and not of the other; as the book is in 34 aſſ. 4. and he ſaid that this caſe ought to be examined by the Rules of the common Law: And he ſaid, that at the common Law, when a good thing, and a void thing are put together, in one ſelf-ſame Grant that the ſame Law ſhall make ſuch conſtruction, that the Grant ſhall be good for that which is good, and void for that which is void: So here alſo by the Rules of the Law, the intent of the Grantor ſhall be expreſly obſerved, as neer as is poſſible, And to that purpoſe the Law changes a Copulative into a Diſjunctive, and a Diſjunctive into a Copulative, as in Mallories caſe in, 5 Coke (on) ſhall be conſtrued (et) and Chapman and Baltons caſe in the Comment: (et) ſhall be conſtrued as (on) and ſo, 5 of Coke, Brudenels caſe, a Leaſe Habendum for the lives of A. B. and C. If the ſaid A. B. and C. ſo long live, there (et) ſhall be expounded for (or) and the Leaſe ſhall be good, ſo long as any of them lives, for that was the intent: ſo 3 and 4 Eliz. Dyer, Culpeppers caſe, Dyer 207. To the intent that one clauſe in the Letters Patents of the King ſhall not be void, this was conſtrued, as an abſolute in it ſelf, though it were in the middle of another ſentence: ſo in Gardner and Bredons Caſe, 11 Coke, to the intent that a Feoffment for tenant for life, and him in remainder ſhould be good, the Law conſtrues that one act as two acts ſeverally: As the ſurrender of tenant for life, and feoffment of him in remainder, And this, though it make a diſcontinuance, and if the Law will make diviſion of a ſentence, and alſo of one ſelf-ſame Act, a fortiori here it ſhall make diviſion. where the caſes in their own nature are ſeverall, And the caſe to be adjudged upon the equity of a Statute. And as to Colcheſters caſe reported in Twynes caſe, 3 Coke, 92 b. where the Obligation ſhall be void in all, in ſo much that one clauſe of the Condition was within the Statute of 2 Ed. 6. He ſaith, that this was by reaſon of the words of the Statute, (concerning) for the Statute makes all Bonds concerning Offices void, but otherwiſe, he ſaid, that a Deed may be well good in part, and void in part: As if a Deed be read to a man unlearned, and part of that is interlined, this is good for ſo much as was read, and void for the reſidue: As alſo authorities, which ought to be ſtrictly purſued, may be well executed in part, and void for another part; for he held it good Law, if a man make a Letter of Attorney to make Livery in white acre,

and

and the Attorney makes Livery in white acre and black acre, this is good for white acre, and void for black acre, and this book is not croſſed, unleſſe by 4 H. 7. which he ſaith, is to be intended where the authority was to make Livery in one acre generally without naming of that, in which caſe alſo the Leſſor hath many acres, the Charter it ſelf is void: Alſo he held that Office is neceſſary, though it be not ancient, that grant of that ſhall binde the ſucceſſor; As if the Biſhop purchaſe new Manor, and grant the Stewardſhip of that with reaſonable fee, or if the Biſhop be newly elected, for this which is neceſſary, cannot be ſaid to be the impoveriſhing of the ſucceſſor; So, if the ancient fee be become too ſmall, reaſonable addition to that, ſhall not make a grant void; And it was many times agreed in Collins and Jones Caſe: That if a copyhold in Fee eſcheat, or be forfeited, and the Biſhop grants that in fee, that this is good; and yet notwithſtanding, it may be that this is worth 40 l. per ann. and the old rent but 5 s. for the makers of the Act, do not intend, that the ſucceſſor is impoveriſhed by ſuch grant, where the ancient rent continues, and the thing was caſuall, and it hath been agreed of all, that if the grant had been ſeverall; videlicet, of the paſturage for the life of the Biſhop himſelf, and of the rent as before, that this had been good; And ſo by ſuch clauſe, & ulterius conceſſimus the ſaid paſturage, which makes the grant ſeverall, and by him it is all one here; for the Law ſaith, that the grant is ſeverall, And by the operation of that ſhall be void for the paſturing of Geldings, after the death of the Grantor, which is all one, as if the Grantor had expreſſed it.

Alſo by him utile per inutile non vitiatur, and for that the 5 marks which was well granted, ſhall not be void by the grant of the paſturage after, as the caſe put before by Yelverton, 2 Ed. 3. 13, Fine ſhall be good for the Hill, and void for the way: Alſo by him, uſe is a good expoſition of a Statute, and from the time that this grant hath been made, there have been many ſucceſſors, and among them, Lancelot which might well have looked into the grants of their predeceſſors, and none of them offered to avoid this grant, untill this Biſhop, by which, it ſeems, that they held this within the intent of the Statute, by which he concluded for the Avowant with Yelverton.

Michael. 21 Jacobi Regis.

Dalton againſt Pamplin and the Biſhop of Ely.

QUare impedit, by Dalton againſt Pamplin, and Lancelot the Biſhop of Ely, for a Church in Cambridgeſhire; It was delivered by Hubbart chief Juſtice, for the opinion of all the Court, That if the Biſhop ſuffer uſurpation, and dies, the ſucceſſor may have Quare impedit, or preſent to the next turn by the Statute of primo Eliz. So if the Biſhop ſuffers ſeiſin, and diſcent by covin, and conſent, or without covin or conſent and dies, the entry of the ſucceſſor is lawfull by the ſaid Statute, but if a man makes a Leaſe to the Biſhop and his ſucceſſors, rendering rent, and for default of paiment, to re-enter, and the rent is behinde, and the Leſſor re-enter, and the Biſhop dies, the ſucceſſor is not remedied by this Statute, for that, that the Leſſor hath good title by Condition annexed to the Eſtate; but if the rent be ſuffered to be behinde

behinde by conſent, now the Succeſſor ſhall be ayded by this Statute, becauſe the Biſhop hath new Title, as to enter in Mortmain, and doth not enter within the year, and dyes: The Succeſſor ſhall not be ayded by this Statute, for it was the intent of the Statute to preſerve the ancient poſſeſſions of the Church, and not Titles gained de novo: So if the Biſhop, Purchaſor of an Advowſon, ſuffers uſurpation, and dyes, the Succeſſor ſhall have a Quare Impedit by this Statute, but he cannot have a Writ of Ejectment, for that, that the Biſhop himſelf cannot maintain this Action for default of Eſpiees.

A man makes a Leaſe for life to a Dean and Chapter, the Leſſor for life ſuffers Recovery with the conſent of the Dean and Chapter; the Dean dyes, if the conſent be ayded by this Statute?

Mich. 1628. 4 Caroli Regis: In the Kings-Bench.

Sir William Withypoles Caſe.

Councel was aſſigned in Caſe of Murder.

SIr William Withypole being indicted before the Coroner in the County of Suffolk for the death of one Maddiſon, the Indictment being removed by Certiorari into this Court, he was led to the Bar, and arraigned upon it; and upon his arraignment, before he anſwered to the murder upon which he was indicted, he deſired to have Councel aſſigned to him, alledging that he had matter in Law to plead to quaſh the Indictment: And the Court obſerving, that Holborn of Lincolns-Inn, an utter Bareſter, prompted him, and privately informed him what he ſhould ſpeak, appointed Holborn to ſhew to the Court, what matter in Law was to be alledged to quaſh the ſaid Indictment: And upon that he opened to the Court, That the ſaid Indictment was taken by the Coroner by a Jury not returned by the Sheriff or Bayliff of the Franchiſe, and that all the Jurors were returned by the nomination of the firſt Juror, who was called Alkiſton, and who procured himſelf alſo to be returned: And alſo he alledged, that ſome of the Jurors were out-lawed, and that for theſe cauſes the Indictment was voyd by the Statute of 11 H. 4. chap. 9. ſee 11 H. 4. 41. b. and Staffords Caſe, 1 H. 7. And upon this the Court appointed, That the ſaid Sir William Withypole ſhall be brought to the Bar again the next day, without anſwering to the Indictment at that time: And he being brought to the Bar again the next day, Serjeant Brampſtone, Noy, and Littleton, being aſſigned his Councel by the Court, opened the matter again as before; and upon this the Court gave him day for a week to plead to the Indictment at his peril; and that in the mean time he ſhould have Notes of the names of the Jurors, and of the day of the murder, and of his abettors, and their additions, and alſo of the name of the Coroner: And upon that he at another time departed again, without pleading to the Indictment.

Mich. 4 Caroli Regis.

Row againſt Ocam.

Hillary, 3 Caroli Regis, in the Kings Bench, Rot. 1024. it was reſolved, That an Ejectione Firmæ for forty Acres of Land by eſtimation is not good, for the demand ought to be certain.

Lord Say againſt Stephens.

LOrd Viſcount Say, *alias* Seal, brought a Writ of Scandalo Magnatum upon the Statute againſt Stephens for Slander; and after many exceptions taken, in Arreſt of Judgment, after Verdict for the Plaintiff, and 2000 l. damages, that the Statute was miſrecited, it was reſolved, That miſrecital of the Preamble of the Statute, or of any part of the Statute, which doth not make the offence, or provide puniſhment, doth not vitiate the Count: Alſo it was objected, That it doth not appear that the Sheriff was Sheriff at the time of the ſpeaking of the ſlanderous words: But it was agreed, that in ſo much that this appears by implication, in ſo much the words were ſpoken to a Servant, and were [Thy Lord] which was ſufficient, and upon that, Judgment was given for the Plaintiff: And after that, the Defendant brought a Writ of Error in the Exchequer Chamber upon the Statute of 27 Eliz. And it was reſolved, that it doth not lie; First, in ſo much that it was not an Action upon the Caſe, nor any other Action mentioned within the Statute, but an Action founded upon the Statute: Secondly, that it was tam pro domino Rege, quam pro ſeipſo.

Low againſt Woodward.

IT was reſolved, That an Action upon the Caſe for ſlandering of a Title, was not within the Statute, for giving of greater damages and coſts.

It was alſo reſolved, That if an Obligation be made to J. S. and a Corporation, that if J. S. dye, the Obligation ſhall not ſurvive, in ſo much that the Corporation and the Executors of J. S. joyn in Suit.

Trinit. 15 Jacobi.

Montjoy Blunts Caſe.

MEmorandum, It pleaſed his Majeſty, under his privy Signet and Sign Manual, bearing date the twentieth day of November in this fifteenth year of his Reign, to ſignifie to me and my Fellow-Juſtices of the Court of Common Pleas, That he had been humbly petitioned by Montjoy Blunt, under the age of 21 years, as well by himſelf as by his Kindred, Friends, and Feoffees, to whoſe cuſtody

the

the late deceaſed Earl of Devonſhire did commit his Eſtate in truſt, That he would declare unto us his liking, that he might be admitted to ſuffer a common Recovery of the Manor of Wankead, for payment of his Debts, and further advancement of his own means, to the uſe of the Earl of Buckingham, which his Majeſty by his ſaid Letter did accordingly. Now, though we did never hold ſuch a Recovery unlawful, nor void in Law, yet we have refuſed many motions in that kinde, as holding it very inconvenient; but inconveniency is diſcerned by the circumſtances: And therefore I acquaint my Brethren, we determined, That I ſhould ſend for the young Gentleman himſelf, and examine him ſole and in ſecret of his Reaſons of his Recovery, and of his own free-will, which I did; and he being of eighteen years of age, or thereabouts, did ſatisfie me of his good liking, and that he did conceive it to be neceſſary for his Eſtate: yet not herewith contented, I cauſed the Earl of Southampton, the Lord Danvers, and Mr. Wakeman, the perſons to whom the world knew he and his Eſtate were committed in truſt, and that they had worthily performed it; and calling them into the open Court, and queſtioning them, They confeſſed unto us all, That it was neceſſary for the young Gentleman, and for his good, of their knowledg, to part with this thing; and that therefore they had made means to his Majeſty for his Letter in that behalf: Whereupon the Recovery was paſſed openly at the Bar the laſt day of this Michaelmas Term, 15 Jacobi, againſt Mr. Blunt in perſon; and the Earl of Southampton, the Lord Danvers, and Mr. Wakeman, were admitted his Guardians.

Brownlow and Waller, Prothonotaries, gave me Notes of the like Recoveries of Infants, Mich. 32 H. 8. Rot. 441. and Paſch. 33 H. 8. Rot. 128. Trin. 16 Eliz. Rot. 17. and Mich. 26 and 27 Eliz. Rot. 45. and 72. P. 42 Eliz. Rot. 1. and 63. 44, 45. 70. 89. 91. 94. P. 32 Eliz. Rot. 60. Tr. 38 Eliz. Rot 41. Hil. 40 Eliz. Rot. 62. T. 40 Eliz. 1. 21. P. 41 Eliz. Rot. 124. and 112. M. 41, 42 Eliz. Rot. 13. M. 34 and 35 Eliz. Rot. 166. by Zouch. M. 39 and 40 Eliz. Rot. 82. and 173. M. 41 and 42 Eliz. Rot. 29. and 156. and 72. T. 42 Eliz. Rot. 201. M. 42 and 43 Eliz. Rot. 173.

THE NAMES of the CASES.

A TABLE OF THE PRINCIPAL MATTERS Contained in the Book.

Extent

Where

Slander,

FINIS.